

B 2
STORAGE

Government
Publications

Government
Publications



Digitized by the Internet Archive
in 2022 with funding from
University of Toronto

<https://archive.org/details/31761114675184>



Ontario

Labour
Relations Board

Report

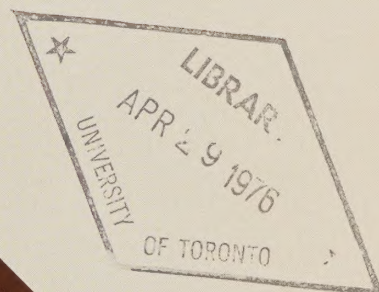
Decisions January 76

Government
Publications

20NLR

054

4625



ONTARIO LABOUR RELATIONS BOARD

Acting Chairman RORY F. EGAN

Vice-Chairmen G.W. ADAMS
F.V. BOSCARIOL
K.M. BURKETT
D.D. CARTER
G.S.P. FERGUSON, Q.C.
R.A. FURNESS
D.H. KATES

Members H.J.F. ADE
D.B. ARCHER
J.D. BELL
E. BOYER
A. GRIBBEN
L. HEMSWORTH
O. HODGES
F.W. MURRAY
P.J. O'KEEFFE
J.E.C. ROBINSON, Q.C.
N. SATTERFIELD
H. SIMON
W.H. WIGHTMAN

Executive Assistant to the Chairman L.V. PATHE *Registrar* A.M. BRUNSKILL

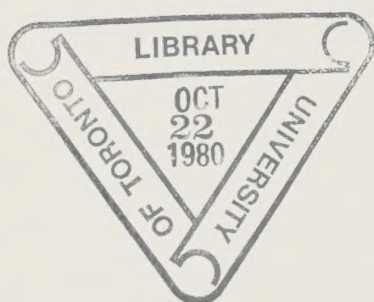
Solicitor S.D. SAXE

Editor, Monthly Report S.D. SAXE

**ONTARIO
LABOUR RELATIONS BOARD
REPORTS**

**A Monthly Series of Decisions from the
Ontario Labour Relations Board**

Cited [1976] OLRB REP.



CASES REPORTED

Canron Ltd., Eastern Structural Div. Re Cdn. Workers U. And Shopmen's L U 743 of BSOIW	997
Daymond Ltd. Re UAW And Group of Employees	1002
Hamilton & District Sheet Metal Contractors Inc. And SMW L U 537 Hamilton Ont. Branch And Electrical Power Systems Const. Assoc	984
Hawker Industries Ltd., Cdn. Bridge Div. & USA, L 2471 Re Clifford Renaud, et al	967
London, Corp. of the City of, Re London Civic Employees' L U 107, CUPE	990
Lummus Co. Canada Ltd. & Ont. Erectors Assoc. Re BSOIW, L U 700	980
Pilkington Brothers (Canada) Ltd., Pilkington Glass Mfg. Application	988
Provincial Fruit Co. (Ottawa) Ltd. Re Warehousemen & Miscellaneous Drivers L U 419 aff'l TCWH	1007
UE L 542 Re Andrew Warren, Helen Warren, Danilo N. Cortes Re Andrew Warren, Helen Warren, Danilo N. Cortes and UE L 542 Re Andrew Warren, Helen Warren, Danilo N. Cortes	963

INDEX OF CASES

Arbitration – S112(a) – S37(5a) – Whether collective agreement grievance process must be followed before an application may be made pursuant to S112(a).	
THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 700 v. THE LUMMUS COMPANY CANADA LIMITED, AND THE ONTARIO ERECTORS ASSOCIATION	980
Charges – Employees – S1(3)(b) – Whether an acting or probationary foreman without full powers excluded – S7a – Whether employer letter suggesting rejection of union a violation of the act.	
INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS, (UAW) v. DAYMOND LIMITED v. GROUP OF EMPLOYEES	1002
Discharge for Union Activity – Whether temporary employee discharged contrary to S58(a) – S79(4a) – Whether respondent has discharged responsibility to prove on balance of probabilities that lay-off not in part motivated by union activity.	
LONDON CIVIC EMPLOYEES' LOCAL UNION NO. 107, CANADIAN UNION OF PUBLIC EMPLOYEES v. THE CORPORATION OF THE CITY OF LONDON	990
Duty of Fair Representation – S60 – Whether respondent trade union violated duty when it negotiated an agreement with employer following shut down of one plant to employee displaced members at second plant and place them at end of seniority list – Consideration of possible remedies especially in view of the passage of time.	
CLIFFORD RENAUD, ET AL v. THE UNITED STEELWORKERS OF AMERICA, LOCAL 2471, AND HAWKER INDUSTRIES LIMITED, CANADIAN BRIDGE DIVISION	967
Employees – Charges – S1(3)(b) – Whether an acting or probationary foreman without full powers excluded – S7a – Whether employer letter suggesting rejection of union a violation of the act.	
INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS, (UAW) v. DAYMOND LIMITED v. GROUP OF EMPLOYEES	1002
Membership Evidence – Trade Union Status – Whether creditable evidence of fraud in case where Board granted status – Whether evidence of intimidation sufficient to cast doubt on membership evidence.	
CANADIAN WORKERS UNION v. CANRON LTD., EASTERN STRUCTURAL DIVISION v. SHOPMEN'S LOCAL UNION NO. 743 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS	997

Practice – Proper Parties – Whether intervenor a proper party in Accreditation application – Whether applicant has a duty to inform the Board of all interested parties – Whether interested parties have duty to inform their representatives of applications – Effect of intervenor having made representations in an earlier dismissed application that it should be added as a party.

HAMILTON AND DISTRICT SHEET METAL CONTRACTORS INC. v. SHEET METAL WORKERS' INTERNATIONAL ASSOCIATION LOCAL UNION 537 HAMILTON ONTARIO BRANCH v. ELECTRICAL POWER SYSTEMS CONSTRUCTION ASSOCIATION 984

Sale of a Business – Whether sale of a Business or assignment of a lease of space at food terminal – Effect of goodwill and customer list not being sold – (dissenting decision-majority decision reported (1975) OLRB REP 830).

WAREHOUSEMEN AND MISCELLANEOUS DRIVERS LOCAL UNION NO. 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA v. PROVINCIAL FRUIT COMPANY (OTTAWA) LIMITED 1007

S61 – Whether threats by union to have employees fired for refusing to authorize a dues check-off pursuant to a union security clause constitutes a violation of the Act – Whether threat of physical force in same circumstances a violation – Whether threats to effect such a purpose a violation of a right protected by the Act.

ANDREW WARREN, HELEN WARREN, DANILO N. CORTES v. UNITED ELECTRICAL, RADIO MACHINE WORKERS OF AMERICA AND THEIR LOCAL 542 963

Strike – S82 – Whether Board will issue cease and desist where employees are back to work and there has been a history of strikes – Effect of breach of S82 and method of enforcement.

PILKINGTON BROTHERS (CANADA) LIMITED, PILKINGTON GLASS MANUFACTURING DIVISION v. THOSE PERSONS NAMED IN SCHEDULE “A” OF THIS APPLICATION 988

Trade Union Status – Membership Evidence – Whether creditable evidence of fraud in case where Board granted status – Whether evidence of intimidation sufficient to cast doubt on membership evidence.

CANADIAN WORKERS UNION v. CANRON LTD., EASTERN STRUCTURAL DIVISION v. SHOPMEN'S LOCAL UNION NO. 743 OF THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRON WORKERS 997

1255-75-U 1257-75-U 1258-75-U Andrew Warren, (Complainant) v. United Electrical, Radio & Machine Workers of America and their Local 543 (Respondent) and Helen Warren (Complainant) v. United Electrical, Radio & Machine Workers of America and their Local 543 (Respondent) and Danilo N. Cortes (Complainant) v. United Electrical, Radio & Machine Workers of America and their Local 543 (Respondent).

BEFORE: D.D. Carter, Vice-Chairman, and Board Members F. W. Murray and H. Simon.

APPEARANCES AT THE HEARING: *A. Warren, H. Warren, D. N. Cortes on behalf of themselves; R. Russell for the respondent.*

DECISION OF THE BOARD: January 9, 1976

1. These are three complaints alleging that the respondent has violated section 61 of *The Labour Relations Act*. At the outset of the hearing it was recognized that certain facts were common to all three claims. Because of the overlap of evidence, the Board exercised its procedural discretion and directed that the three proceedings be consolidated.

2. These complaints raise the question of what legal protection is afforded by *The Labour Relations Act* to employees who wish to avoid the application of a union security provision. In this case, the three complainants allege that the actions of certain union officials were intimidatory and coercive, forcing them to sign forms authorizing the check-off of amounts equivalent to union dues. The respondent, on the other hand, submits that its officials were merely policing the collective agreement to ensure that the union security provision was being applied to all employees, and this was conduct not regulated by the Act.

3. The evidence relating to the three complaints is very similar. The Board will deal first with Mr. Andrew Warren's complaint, since Warren's relationship with the respondent appears to have precipitated this matter. Warren was a former president of Local 543, which had a collective agreement with Westinghouse Canada Ltd. covering certain workers at its Cambridge plant. Apparently, Warren had a falling-out with the union, the details of which are not relevant to this case, and, as a result, he took the usual step of revoking his check-off authorization during the ten-day period immediately preceeding the expiration of the collective agreement, a step that was permitted under the collective agreement. Subsequently, the respondent negotiated a new collective agreement, containing the same union security provision as the former agreement. This provision, although allowing employees to revoke their authorization during the last ten days of the agreement, also provided that:

"An employee hired or entering the bargaining unit during the term of this Agreement will be required within 30 days after his date of employment or transfer to complete an employee's Check-off Card (in the form set out in Appendix "B") assigning to the union, through payroll deductions, an amount equivalent to that provided under 22.01. The same requirements shall apply to any present employee within 30 days after the date of this Agreement for whom no Employee Check-off Card is on record with the company.

It was the respondent's attempt to enforce its interpretation of this provision that brought matters to a head.

4. On October 31, according to Warren, he was approached by Mr. Jack Knight, a union steward. Knight said to him, "I guess its no good to ask you to sign back on with us?" and, after Warren indicated that he would not sign the authorization, Knight replied, "then you'll be out the door". Knight's version of the exchange was somewhat different, indicating that the exchange had ended with Warren's reply to his initial query, a reply that was as profane as it was adamant.

5. In chronological order, the next event of significance was an interview with Mr. Reeves, the employer's supervisor of labour relations, which was held on November 18. Warren testified that Reeves, after showing him a letter from the respondent demanding his dismissal unless he signed the dues authorization, advised him to sign the authorization. According to Warren, he then sought legal advice from an advisor and, after considering the advice, signed the dues authorization on November 21.

6. A further incident involving Warren and the other two complainants occurred on November 24, after he had signed the authorization but at a time when the union was not fully aware of the fact. Warren's account of the incident, which was not refuted, was as follows. As they were approaching the rear entrance of the plant, they were greeted by Mr. Jim Curry, the president of the local union. According to Warren, Curry's attitude was hostile as he berated them for their refusal to provide financial support to the respondent. The exchange culminated in Curry brandishing his fists at the three complainants. Curry's belligerence toward Warren did not end there. Warren testified that, later that same morning, Curry approached him again, this time while he was at his work station, and attempted to provoke a fight.

7. Helen Warren, Warren's wife, told a somewhat similar story. She stated that, on October 31, she was approached by Gail Seibert, a union steward, and asked to go to a meeting apparently established for the purpose of having her sign a dues authorization. Upon refusing to attend the meeting, she was told by Seibert, "you know I can have you fired if you don't sign." Helen Warren testified that in a conversation with Gail Seibert on November 7, she was again told that the union would have her fired if she didn't sign. Later that month, she met with Reeves, who informed her that the union was pressing for her dismissal unless she signed the authorization. Subsequently, on November 21, she signed the dues authorization at her home. Finally, it was her testimony that she had been ostracized by her fellow employees, both before and after she had signed the dues authorization.

8. Danilo Cortes testified that he was approached by Gail Seibert on November 6. Upon refusing to sign the dues authorization, he was then told, "you will be fired out if you don't sign it". According to Cortes, he was further informed by Seibert that "it is in the contract that you have to sign the check-off", to which he replied, "it is not in the contract that we will be fired out if we don't sign it." The conversation was then terminated by Seibert who said, "if you don't want to sign, it will be the last time I come to you." Subsequently, on November 18, Cortes was interviewed by Reeves, and advised to sign the authorization because the respondent was pressing for his dismissal. Cortes subsequently signed the dues authorization at his home on November 21.

9. The complainants' allegations that the respondent has violated section 61 of the Act raises two issues. First, did the conduct of the officials of the respondent constitute intimidation or coercion? Second, if the conduct did amount to intimidation or coercion, was its purpose to compel any person "to refrain from exercising any other rights under this Act"?

10. Turning to the first question, there are two situations that must be examined by the Board – the statements made by the union officials concerning the consequences of their failure to sign a check-off authorization and the conduct of Curry on November 24. In respect of the statements concerning the consequences of a failure to sign the check-off authorization, it is our conclusion that this conduct does not constitute intimidation or coercion as contemplated by s.61 of the Act. These statements, in the context in which they were made, were at most, warnings that the respondent would attempt to enforce the union security provision of the collective agreement. A warning of an intent to enforce what is believed to be a contractual right cannot be characterized as intimidation, even though there may be some small element of a threat contained in the warning. To hold otherwise might make illegal any communication made in anticipation of the enforcement of such rights by legitimate means.

11. An examination of the second type of conduct, however, brings us to a different conclusion. The complainant's accounts of the incidents occurring on November 24 was unrefuted and we, therefore, accept the facts as stated in those accounts. Given these facts, we must conclude that Curry's conduct constituted a threat of physical force directed against the complainants. This kind of conduct is clearly coercive.

12. A problem, however, is that this conduct occurred after the complainants had signed the check-off authorization forms. Can it be said that Curry was seeking by intimidation or coercion to compel the complainants to sign the authorization form? In our opinion, the chronology of events is not relevant. It is obvious that Curry was not aware that the complainants had signed the authorization and was still attempting to get the complainants to sign. The fact that the complainants had already signed did not in any way alter the purpose behind Curry's action. The wording of s.61 makes it clear that purpose and conduct are the key ingredients of the offence. The mere fact that the purpose is not, or cannot, be accomplished does not make legitimate intimidatory or coercive conduct intended to compel a person to refrain from exercising any right under the Act.

13. The essential question, then, is whether Curry's actions were intended to compel the complainants to refrain from exercising any rights under the Act. From the evidence it is clear that the complainants were attempting to avoid the application to themselves of the union security provision. Can it be said that the Act provides employees with any general right to avoid the application of union security provisions? We think not. Section 38 of the Act expressly recognizes the legitimacy of union security provisions, allowing such provisions to be bargained for by trade unions and to be included in binding collective agreements. The legal effect of the union security provision has been authoritatively stated by Judson, J. in *Le Syndicat Catholique des Employes de Magasins de Quebec Inc. v La Compagnie Paquet Ltee* (1959), 18 D.L.R. (2d) 346 (S.C.C.), at p. 353:

The union is, by virtue of its incorporation under the Professional Syndicates' Act and its certification under the Labour Relations Act, the representative of all employees in the unit

for the purpose of negotiating the labour agreement. There is no room left for private negotiation between employer and employee. Certainly to the extent of the matters covered by the collective agreement, freedom of contract between master and individual servant is abrogated. The collective agreement tells the employer on what terms he must in the future conduct his master and servant relations. When this collective agreement was made, it then became the duty of the employer to modify his contracts of employment in accordance with its terms so far as the inclusion of those terms is authorized by the governing statutes. The employees, and whether or not they are members of the union, they are identical for all. How did this compulsory check-off of the equivalent of union dues become a term of the individual employee's contract of employment? They were told by the notice that in future this deduction would be a term of their contract of employment. They were put to their election at this point either to accept the term or seek other employment. They made their election by continuing to work and the deductions were actually made. It is admitted that all these employees were employees at will and no question arises as to the right of the employer to make or impose new contracts or of the length of notice they may be required to bring this about. It was not within the power of the employee to insist on retaining his employment on his own terms, or on any other terms other than those lawfully inserted in the collective agreement.

14. The result is that where an employer and a union have agreed to a union security provision, affected employees have no general right to choose not to be bound by that provision while still continuing to be employed under the collective agreement. The only exception to this situation is provided by s.39 of the Act, relieving the employee from the full rigour of union security provisions, where it can be established that providing financial support to trade union is incompatible with an employee's religious conviction or belief.

15. The facts in this case indicate that the complainants were attempting to assert a right to maintain their employment while refusing to make financial contribution to the respondent. This refusal was not based upon any religious conviction or belief but, rather, was the result of an internal squabble in which they were involved. We must conclude, therefore, that the position taken by the complainants did not constitute the exercise of any right under the Act.

As a result, the Board concludes that there has been no violation of s.61. This conclusion, however, does not represent a condonation of Curry's conduct. Rather, it is simply a recognition of the fact that the Board has no general power to police intimidatory or coercive conduct. It is only when this type of conduct interferes with the exercise of rights conferred by the *Labour Relations Act* that a breach of s.61 occurs. Where intimidatory or coercive conduct falls outside these boundaries, complainants must find their remedy in the general criminal and civil law.

16. The three complaints, therefore, are dismissed.

7369-74-U Clifford Renaud, et al, (Complainants) v. The United Steelworkers of America, Local 2471, and Hawker Industries Limited, Canadian Bridge Division, (Respondents).

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members J. D. Bell and O. Hodges.

APPEARANCES: *G. V. Wortley and R. D. Howe for the complainants; G. Charney, D. Benson and H. W. Brooks for the Steelworkers Local 2471; L. P. Kavanaugh and R. C. Merryfield for the respondent employer.*

DECISION OF FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBER J. D. BELL. January 22, 1976

1. Pursuant to the decision of the Board dated July 16, 1975, the majority of the Board, upon hearing the representations of the parties with respect to two preliminary objections, directed the Registrar to list this complaint for hearing on the merits.

2. At the commencement of the hearing of this matter on November 25, 1975, the Board entertained the representations of the parties concerning the complainants' request to consolidate this complaint with a new complaint (Board File No. 055-75-U) dated July 2, 1975. That request was denied for the reasons as delivered orally at the hearing.

3. The following facts are not in dispute. The respondent company and the respondent trade union were parties to a collective agreement (Exhibit #1) effective from April 2, 1971 and which was to remain in effect, subject to notice, until April 1, 1974. This agreement covered both of the company's operations at its Plant No. 1 and Plant No. 2 and, historically, each plant had jealously maintained separate and independent seniority lists. During the summer of 1972, the company officially informed the trade union of its decision to cease operations at Plant No. 1, whereupon the company then entered into discussions with the union concerning the fate of the Plant No. 1 employees who, at that time were faced with the prospect of a permanent lay-off. The result of these discussions led to the negotiation of an amendment or "addendum", effective September 19, 1972 (Exhibit #2) to the aforementioned collective agreement. The purported ratification of this amendment by the general membership of the union was subsequently communicated to the company.

4. It would be helpful to note that some time prior to the expiry date of the said collective agreement on April 1, 1974, the company and the union commenced negotiations towards its renewal. Following conciliation proceedings, a lawful strike of 13 weeks duration then ensued prior to the settlement of all issues between the parties in July of 1974. Following a purported ratification by the general membership, the terms of settlement were subsequently engrossed in the present collective agreement (Exhibit #3) signed on October 21, 1974 and retroactively effective from April 1, 1974, to June 1, 1976.

5. The complainants in this matter had initially instituted complaint proceedings solely against the respondent trade union (See Board File No. 7028-74-U) on December 9, 1974, and following a hearing before another division of the Board, leave to withdraw was granted on March 4, 1975.

6. As regards the complaint presently before us, we have, in Paragraph #5 of the decision of the majority of the Board in this matter dated July 16, 1975, defined the issue in these proceedings to be as follows:

"The gist of the complaint is that on or about September 18, 1972, the 33 individual complainants were dealt with by the respondent trade union and company contrary to the provisions of Sections 60 and 79(4)(c) of the said Act. In particular, it is alleged that the trade union did act in a manner that is arbitrary, discriminatory or in bad faith in the representation of the complainants by negotiating with the company an amendment to the then current collective agreement dated April 2, 1971, which amendment provided for the transfer with full accumulated seniority of 26 employees formerly shown on the Plant No. 1 Seniority List. In contrast, the complainants were assigned mere date of entry seniority with respect to the Plant No. 2 Seniority List."

7. The specific provisions in the amendment particularly relevant to the complaint now before us are reproduced herein as follows:

"(6) It is agreed by the Company Management representatives and Local 2471 Negotiating Committee effective the date of the signing of this addendum, the following personnel will transfer all their group and Company seniority to Plant 2: (Here follows a listing of the names of the 26 employees as referred to in Paragraph #6 herein).

(7) Employees on the Plant 1 seniority list shall retain their Company seniority for the purpose of pensions and any other benefits. After the date of signing this addendum, they shall enter Plant 2 as recalled and will accumulate Plant 2 seniority from the date of recall, but seniority from the date of recall, but will be excluded from the probationary clause ..."

8. During the course of these proceedings, the parties agreed that the testimony of Clifford Renaud and Nick Baciú would be representative of the 32 named complainants. The testimony of Mr. Renaud establishes that he commenced employment on May 7, 1948, and that he was up to the time of his lay-off on September 5, 1972, regarded as a Plant No. 1 employee. He stated that upon being recalled to work on September 23, 1972, he was not made aware, in his words "that may seniority was gone" until he spoke to Mr. Baciú at this time. Upon cross-examination, Mr. Renaud stated that he then made enquiries to Stan Brouyette, the Chief Steward originally designated for Plant No. 1, who advised him that "they had a meeting and that's what they had decided." Mr. Renaud stated that he was further advised by Mr. Brouyette that the a union membership meeting had taken place at which time the amendment to the collective agreement had been ratified. The witness further stated that he had received no personal notice of any such meeting. Mr. Renaud conceded that notices of union meetings are normally effected through postings on the Plant bulletin boards, and that it was possible that such a posting could have been effected in this manner during the period of his absence from work while he was on lay-off. When he was asked if he nevertheless would likely have been told by someone engaged at the plant at the time, of the meeting, he replied in the negative on the basis that he lived outside the city and that consequently, he would have no personal contact with any of these employees.

10. Mr. Renaud further testified that in the company of Mr. Baciu, he subsequently approached Vojo Jegina, the President of the local union, with a view to perusing the minutes of the membership meeting wherein the amendment to the collective agreement was purportedly ratified. On the first occasion that they had attended before him in the union office, Mr. Jegina advised that the minutes were at his home and that they should come back the next day. Upon returning at this time, Mr. Jegina then advised that his lawyer had possession of these minutes, but that he would see what he could do. Following the filing of the initial complaint in this matter in December of 1974, Mr. Renaud stated that he was given a slip from his lawyer listing requests for various items of information. When he, in the company of Mr. Baciu, reattended before Mr. Jegina, Mr. Renaud further stated that upon presenting this slip to Mr. Jegina, "he (Mr. Jegina) threw the slip at me and said f -- you and your lawyer and get out of here!"

11. At the close of Mr. Renaud's re-examination by his counsel, counsel for the union sought leave of the Board to further cross-examine him in what was described as a "crucial area" of the complainants' case. When counsel for the complainants and counsel for the company indicated they had no objection to this mode of procedure, the Board directed counsel for the union to proceed. He then put to Mr. Renaud the statement that two union meetings had been held in September of 1972 in connection with the amendment. Counsel then asked the witness whether he was present during the course of the meeting wherein the amendment had been ratified. Upon receiving a negative reply, counsel for the union thereupon advised the Board that he would be tendering evidence in these proceedings in order to establish that Mr. Renaud's testimony was incorrect and that he in fact was in attendance at this meeting.

12. Mr. Baciu's testimony essentially corroborates that given by Mr. Renaud. He further stated that during the course of his conversations with Mr. Brouyette, he had asked him "how they could do a thing like that". Mr. Brouyette's reply to him at this time was "We can do anything we feel like." Counsel for the union upon cross-examination put to the witness the statement that he (Mr. Baciu) had been seen at the union meeting during the course of which the amendment had been ratified. Mr. Baciu, although conceding that he had attended various union meetings in the past at the U.A.W. Hall, could not recall being in attendance at this particular meeting.

13. The complainants in these proceedings also adduced testimony from Carl Gould, who presently sits on the union executive committee in the capacity of "Guide". He was also a member of the union's negotiating committee during two previous sets of negotiations with the company. Mr. Gould originally acted as Machine Shop Steward in Plant No. 1 and during the course of the negotiations which culminated in the former collective agreement (Exhibit #1), he became President of the local. Following ratification, he relinquished this position to Mr. Jegina, who up to that time, had been Plant No. 2 Chairman. Mr. Gould testified that at the time of the amendment to the collective agreement (Exhibit #2) in September of 1972, had had been away from work having chosen a voluntary lay-off. He stated that he had never seen a copy of this amendment until it was shown to him by counsel for the complainants during the course of these proceedings. In this regard, he stated that, although at the time of the execution of the amendment, he was not a member of the negotiating committee (and that his name, therefore, would not appear on this document in any event), he nevertheless was a member of the union's policy committee. As the amendment, in his opinion, involved a fundamental policy matter within the union, he felt that he should

have been consulted beforehand. Had his opinion been sought, he stated that he would have supported the retention of full seniority, not only for the 26 employees who "went" with their jobs to Plant No. 2, but for all of the Plant No. 1 employees. When asked if he was surprised upon being advised of the Plant No. 1 closure, he replied in the affirmative on the basis that during the previous set of negotiations which led to the signing of the collective agreement (Exhibit #1), the company had given no inkling of any possible closure of Plant No. 1. Accordingly, in his opinion, the parties had negotiated on the basis of its continued existence.

14. The only witness called in defence to this complaint was Mr. Darwin Benson, the respondent trade union's International Representative. His testimony is to the effect that he began servicing the local just after the collective agreement (Exhibit #1) was executed following the end of the strike. Mr. Benson was responsible on behalf of the union for administering the Plant No. 1 closure, verbal notice of which he had initially received in June of 1972. He stated that although he had no direct knowledge, he had received "assurances" that official notices to this effect were posted on all company bulletin boards, on or about September 5, 1972. Commencing in July of 1972, he indicated that approximately ten meetings were held between the company and the local's duly elected bargaining committee in this respect. According to Mr. Benson, upon being advised of the planned Plant No. 1 closure, he then reviewed the provisions of the collective agreement (Exhibit #1) with the bargaining committee. They came to the conclusion that the employees in that plant would be terminated, and that these employees no longer would have any rights within the company. In these circumstances, he stated that both the company and the union agreed to sit down and work out a solution for as many of the affected employees as possible and the parties in effect then went into negotiations for this purpose.

15. It was during the course of these negotiations, Mr. Benson further testified, that the company indicated that 26 jobs that had been performed in Plant No. 1 would be continued in Plant No. 2. He stated that although the company indicated that these jobs could have been subject to job posting in Plant no. 2, the company nevertheless had agreed to permit the 26 Plant No. 1 incumbent employees to be transferred along with their jobs to Plant No. 2 with their accumulated seniority. (Their names were accordingly "dove-tailed" on the Plant No. 2 seniority list.) As regards the remainder of the employees at Plant No. 1, the company and the union then agreed that these employees would also be transferred to Plant No. 2 and that for all fringe benefits purposes, they would retain their accumulated seniority. However, and this is the specific subject matter giving rise to this complaint, their rights concerning lay-off and recall and specific job posting opportunities within Plant No. 2, were to be based upon their "date of entry" seniority into Plant No. 2. (Put in other terms, the names of the complainants were "end-tailed" or placed at the foot of the Plant No. 2 seniority list). Mr. Benson further stated that the collective agreement (Exhibit #1) did not provide for a right of recall to Plant No. 2 with respect to employees laid off at Plant No. 1, and that in the filling of any vacancies occurring in Plant No. 2, the company, if it had so desired, could have "gone to the street" rather than "hiring" the laid off employees from Plant No. 1.

16. Once the amendment was negotiated, Mr. Benson further stated, that it then had to be ratified by the general membership. His initial intention was to have the matter discussed at the regular monthly membership meeting which was held sometime in early September of 1972. He could not recall the specific date. However, a quorum was not present at

this time, and accordingly it was decided to present the amendment at a special general meeting. Nevertheless, before the local was able to schedule such a meeting, he stated that a petition had been circulated in accordance with the union's By-laws (Exhibit #7B), requiring that the President call a special meeting for the specific purpose of dealing with the amendment. As a result, a special meeting was scheduled, and Mr. Benson further testified that he had received "assurances" that proper notice pursuant to the constitution (e.g. the By-laws) had been given. In this regard, Section 1(b) of Article V, of the By-laws, provides in part:

"Notice of all special meetings must be given the membership of the local union by bulletin board posting or other reasonable means."

17. Mr. Benson further testified that the special meeting was held approximately two weeks after the initial meeting at the U.A.W. hall. In his opinion, the attendance at that meeting represented the largest turn-out of members at any time. (In actual figures, approximately 80 members out of a bargaining unit comprising some 280 employees, or slightly over 25% of the membership in the unit, were in attendance). He stated that at this time he spoke in favour of the amendment and that in this respect he had received the unanimous support of the five members of the local's bargaining committee. He stated that the prospect of also "dove-tailing" the complainants' full seniority into the Plant No. 2 seniority list was fully discussed and that all factions within the union were given an opportunity to speak on the matter. Mr. Benson could not quote specific figures, but he indicated that the resultant vote (through a show of hands) was overwhelming in support of his position. Mr. Benson was not aware if a roll-call of the members present had been taken at this time. Although he indicated that the Secretary would have taken notes of both meetings, he testified that he has never seen these notes, nor could he locate them in the local's minute book kept for that purpose.

18. When questioned as to the composition of the bargaining committee, Mr. Benson replied that it had been made up of three employees from Plant No. 2 and two employees from Plant No. 1. Further questioning in this area by counsel for the complainant revealed that both of these latter two employees were included in the list of the 26 names of employees who had been accorded their full seniority in Plant No. 2. Upon being asked why he would have objected to the complete dove-tailing of all of the Plant No. 1 employees, he replied that this would have had an adverse effect upon the other Plant No. 2 employees since the more senior employees in Plant No. 1 were in the majority.

19. Mr. Benson further testified that, in the past, he had experienced both "merger" and "closure" situations. In his opinion, the company in these circumstances had effected a "closure" of Plant No. 1, as opposed to a "merger" of Plant No. 1 was effected or whether, on the other hand, there was a merger or amalgamation of Plant No. 1 and Plant No. 2, and that accordingly, the "end-tailing" of the complainants' seniority was the appropriate remedy. In his view, a "dove-tailing" of both seniority lists would have created "countless and needless" problems giving rise to numerous arbitrations. Upon cross-examination, Mr. Benson did concede, however, that certain equipment was transferred over to Plant No. 2 from Plant No. 1, and that the "north yard", heretofore regarded as part of Plant No. 1, was maintained and has continued to function thereafter.

20. Section 60 of the Labour Relations Act as follows:

“A trade union or council of trade unions, so long as it continues to be entitled to represent employees in a bargaining unit, shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit, whether or not members of the trade union or of any constituent union of the council of trade unions, as the case may be.”

21. During the course of his argument before us, counsel for the complainants took the position that, but for the amendment, the complainants would have had a “right” to apply, pursuant to the job posting provisions of the collective agreement (Exhibit #1), for any vacancy in Plant No. 2. Accordingly, he submitted that the trade union, in depriving them of that right, is in violation of Section 60 of the Act. In the alternative he argued, that if the Board should conclude that they had no such “right”, that the trade union was nevertheless in violation of its duty of fair representation to the complainants when it conferred the benefit of full seniority to the 26 employees to the exclusion of the remaining Plant No. 1 employees. In the further alternative, it is submitted that the trade union was in breach of its duty since it had in effect failed to negotiate a complete “dove-tailing” of the seniority lists because of “political reasons”.

22. Having reviewed the evidence and the representations of the parties, we cannot conclude that in the absence of the amendment as negotiated on September 15, 1972, the complainants would have been entitled to apply under the job posting provisions of the collective agreement regarding any vacancies in Plant No. 2. Mr. Benson’s testimony, at least in this area, was very clear. Both the company and the trade union reached the conclusion that once a complete shut-down of operations was effected at Plant No. 1, the collective agreement would not have prevented the company from outright terminating the complainants’ employment at that point. We find that interpretation in the circumstances to be a reasonable one.

23. The alternative arguments as presented by counsel for the complainants raise further intricate issues, the initial one being as to whether in the circumstances a simple closure of Plant No. 1 and Plant No. 2. It is the complainants’ position that the respondent company had in effect merged its operations with respect to its two plants such that according to established labour relations practice, a complete “dove-tailing” of the seniority lists would have been in order. In this regard, counsel for the complainant (on the basis of the statements as contained in Paragraph No. 39 of the Board’s decision in the *Gebbie and Longmoore* case [1973] OLRB Rep. 519, at page 526) referred us to the following American authorities: *The Duty of Fair Representation* (1957), 2 Villanova Law Review 151, *John Oh-Donnell v. Pabst Brewing Co.*, 107 North Western Reporter, 2d series 484 (Supreme Court of Wisconsin), *Ferro v. Railway Express Agency Inc.* 296 F. 2d 847 (1961) (United States Court of Appeals, Second Circuit), *Barton Brands, Ltd. and Edward Humes* 1974-75 CCH NLRB Art. 15,068 (National Labour Relations Board), *Truck Drivers and Helpers Local Union 568 v. Red Ball Motor Freight Inc. et al* 379 F. 2d 137 (1967) (United States Court of Appeals District of Columbia Circuit). Counsel for the respondent trade union, on the other hand, maintained that except for the 26 employees as previously referred to, there had been no merger and that, in the circumstances, the “end-tailing” of seniority was the appropriate remedy. In support of his position, he also had occasion to refer the Board to American authorities, which included: *Ford Motor Company v. Huffman et al* 345 U.S. 330 (United States Court of Appeals for the Sixth Circuit), *Humphrey et al v. Moore et al* 375 U.S. 335 (Court of

Appeals of Kentucky), *Lawrence E. Bienski et al v. Eastern Automobile Forwarding Company Inc. et al* 231 F. Supp 710 (1964), (United States District Court of Appeals, Ninth Circuit), *George Ball et al v. Eastern Coal Corporation et al* 415 South Western Reporter, 2d 620 (Court of Appeals of Kentucky), *August Fuller et al v. Highway Truck Drivers and Helpers Local 107* 428 F. 2d 503 (1970) (United States Court of Appeals, Third Circuit), *C. McDermott v. Teamsters Joint Council No. 53* 347 F. Supp. 473 (1972) (United States District Court, Pennsylvania).

24. Having reviewed the evidence as adduced in this regard and in particular, taking into account the factors as set out in Mr. Benson's testimony, (see Paragraph #19 herein) we are satisfied that certain aspects of the company's "structural steel" operations as conducted at Plant No. 1 were transferred or merged into Plant No. 2 and that the "north yard" functions as initially associated with Plant No. 1, continued to be maintained. We further find that, nevertheless, a partial closure of the respondent's operations as performed in Plant No. 1, was also effected. In the complex circumstances of this case, and having some regard to the standards as set out in the authorities as cited above, we are satisfied that the trade union's decision to agree to the terms as embodied in the amendment, (see Exhibit #2, and in particular Sections 6 and 7 as set out in Paragraph #7 herein), aside from other considerations, as hereinafter set forth, constituted a reasonable approach towards resolving its dilemma.

25. As previously indicated, counsel for the complainants during the course of his argument has urged the Board to infer that the respondent trade union became "politically motivated" upon being advised that Plant No. 2 was to, in effect, become the only viable entity within the company. Counsel referred to the entity within the company. Counsel referred to the testimony which disclosed that the results of the ratification vote were strongly in favour of the amendment. He asked us, therefore, to draw the further inference that the Plant No. 2 employees were in the majority at the ratification meeting. (There was no direct evidence on this point. However, Mr. Benson's testimony did indicate that, at least as of the time of the negotiation of the amendment, the Plant No. 2 employees were in the majority). Counsel's position in this regard was that the actions of the members of the union executive at this time were designed so as to ensure to these incumbents the continued support of the majority of the employees. Counsel for the complainants also questioned the propriety of the role played by the bargaining committee in the ratification of the amendment by the general membership. He drew our attention to the fact that the committee had been composed of five employees, three of whom were "regular" Plant No. 2 employees. The remaining two employees were Plant No. 1 employees up to this time, but their names were included amongst the list of the 26 Plant No. 1 employees who were to be transferred to Plant No. 2 with full seniority. In this regard, he submitted that the committee may well have been biased in its recommendations and that rather than initially going the "ratification route" with respect to employees who have a "stake" in the passage of the amendment, the matter should have been submitted to some outside union body for a relatively objective and impartial assessment of the situation.

26. On the basis of the testimony as adduced before us, we cannot infer bias on the part of any official of the trade union in this matter, and we are satisfied that the negotiations with the company concerning the amendment were conducted in good faith. Further, we find nothing untoward in the submission of this amendment to the general membership in the circumstances, although we have some query as to why Mr. Gould was not consulted

in this matter since it clearly involved a “policy” matter within the union. (See Paragraph #13 herein, in this regard). Nevertheless, to disqualify the negotiating committee and indeed the general membership in the manner as suggested by counsel, would, in our opinion, constitute an abdication on the part of the trade union, striking at the very root of that trade union’s existence, which, subject to the provisions of Section 60, is premised upon the concept of majority rule. Accordingly, we reject the submissions as put by counsel in this regard.

27. The Board has now had the opportunity to carefully review and assess the totality of the evidence as adduced during the course of these protracted proceedings, and we are satisfied, having regard to all of the circumstances, that the complainants, nevertheless, have made out a *prima facie* case concerning their allegations that they have been improperly dealt with by the respondent trade union contrary to the provisions of Section 60 of the Act. We now propose to consider the nature and the adequacy of the explanations provided.

28. In this regard, we find Mr. Benson, who was the sole witness called in defence, to be quite vague and uncertain in various crucial areas of his testimony. More specifically, he could not give testimony as to the exact date of the ratification meeting, nor from his personal knowledge, could he unequivocally state that notice of this meeting was properly posted upon the plant bulletin boards in keeping with the requirements of the union’s By-laws. His figures with respect to the number of employees in attendance at the ratification meeting were mere approximations and he could not give us a definite break-down with respect to the results of the vote. He did not specifically identify any of the named complainants as being in attendance at this meeting and he could not enlighten this Board as to whether a roll-call or other check-in procedures had been utilized at the time the meeting was called.

29. In assessing Mr. Benson’s testimony, the Board is not unmindful of the fact that he was being called upon in these proceedings to cast his recollections back upon matters which had transpired more than three years prior to the hearing. In the absence of any “aide-memoire” to refresh his memory, we do not find it surprising that his recollections in certain of these areas would have become clouded through the effluxion of time, and we accordingly impart no motivation upon Mr. Benson to deliberately withhold any information from the Board. Be that as it may, we nevertheless must conclude that his testimony before us concerning the events surrounding these meetings to be deficient. In particular, we have some concern with respect to the unexplained disappearance of these “mysterious” minutes, assuming that they were in fact taken. However, the Secretary of the respondent trade union was not called upon to testify in these proceedings. Thus, the Board was denied the benefit of entertaining the “best” evidence in this area from the very person presumably who could have shed some light upon matters which, we find, are peculiarly within the knowledge of the respondent trade union. Furthermore, the Board was afforded no explanation (aside from the respondent trade union’s general submission that the complainants had failed to make out a case) as to why he was not called.

30. In the past, the Board has been prepared to draw inferences in situations where a party fails to adduce direct evidence in defence to charges alleging improper conduct. Thus in the *F. G. Bradley Co. Limited* case [1973] OLRB Rep. 342, the Board, having regard to the facts as set out in that case stated on page 348, as follows:

“In our opinion, this situation is not entirely unlike the circumstances as set out in the *Beaver Engineering* case [1973] OLRB Rep., P. 57 where the Board at page 60 stated:

“Further, the General Manager of Beaver Engineering Limited was present at the hearing. The failure to produce him as a witness or explain the circumstances permits this Board to draw the inference that the unproduced evidence would be contrary to the employer’s case, or at least would not support it; *Murray v. Saskatoon* (1952) 2 D.L.R. 499 at 505 (Sask. Ct. of App.), and since the circumstances surrounding the transactions were entirely within the knowledge of the employer they cannot complain if the inference drawn from the established facts are not favourable to them; *Busuttil v. Diamond T. Trucks (Toronto) Ltd. et al* (1969) 2 D.L.R. (3rd) 167 at 168 (Ont. Ct. of App.).”

(See also the *Dodge Construction Company Limited* case [1971] OLRB Rep. 496 at page 500).

71. In the instant case, the Board is left with the uncontradicted testimony of Messrs. Renaud and Baciu, representative of the testimony of all the named complainants. Their testimony is that they did not observe any notices on the plant bulletin boards (if in fact such notices were posted) regarding the aforementioned union meetings, nor did they personally receive any written communication in this regard. They further indicated that they were not in attendance at either of these meetings. During the course of his cross-examination, counsel for the respondent trade union indicated that he would be calling witnesses to directly establish that at least one of these complainants was in attendance. That evidence, we note, was not forthcoming in these proceedings.

32. The testimony further reveals that upon discovery of their plight, Mr. Brouyette, the former Chief Steward, advised Messrs. Renaud and Baciu (as set out in Paragraph #12 herein) that, “We can do anything we like”. Mr. Brouyette was not called upon in these proceedings to explain this statement and in the circumstances the Board is prepared to treat these words on their face as indicating an attitude of unresponsiveness and arbitrariness on the part of the trade union at the relevant times. That attitude was again subsequently manifested towards them by Mr. Jegina when their request to scrutinize the minutes were treated in the rude and abrupt manner as described in Paragraph #10 herein. Again, Mr. Jegina was not called upon in these proceedings to account for his actions in this respect.

33. In the result, and although we are satisfied that the respondent trade union has not acted discriminatorily or in bad faith, we are nevertheless prepared, in the particular circumstances of this case, to find that its activities, at least insofar as they related to the events surrounding the ratification meeting, were of such an arbitrary nature so as to deny proper representation to the complainants as required pursuant to the provisions of Section 60 of the Act. (In this regard see the decision of the Board in the *El Mocambo Taverne* case [1972] OLRB Rep. 862 and the *R.C.A. Limited* case [1974] OLRB Rep. 60).

34. In the past, the Board was without jurisdiction to provide any remedy in circumstances analogous to those as portrayed in these proceedings. For example, in the *Ocepek et al* case OLRB M.R. August [1967] 997, the Board was met with the situation where the majority of the membership had voted down a proposal concerning the complete “dove-

tailing" of seniority as agreed to between the trade union and the company following the take-over by the respondent company of all assets of another company, the Herbert Morris Crane and Hoist Company Limited. The Board, although sympathizing with the complainants' resultant loss of seniority, for the reasons set out in that decision, nevertheless dismissed the complaint. However, in a concurring opinion, Board Member Irwin stated as follows:

"There is no evidence of violation of any provision of the collective agreement presently in effect between the respondent company and International Association of Machinists, Lodge No. 1031, or of any substantive provision of The Labour Relations Act. Consequently, the Board has no jurisdiction to give any relief to the employees (complainants) in respect of the computation of their seniority credits as applied to lay-offs and recall. It is strictly a matter for negotiation between the company and Local 1031, which is the certified bargaining agent for the employees concerned. Consequently, I am obliged to concur in the decision of the Board that the complaints must be dismissed.

The plight of the complainants disturbs me greatly. I fully appreciate the situation in which they find themselves concerning their seniority credits as applied to lay-offs and recall. I sincerely hope that an equitable and satisfactory solution will be negotiated between the parties who are now bargaining for the renewal of the collective agreement. If the Herbert Morris Crane and Hoist Company Limited had taken over Provincial Engineering Ltd., instead of vice versa, I am sure that the employees of the latter company would want the full term of years they worked for Provincial Engineering Ltd. to apply on their seniority for the purposes of lay-offs and recall with the Herbert Morris Crane and Hoist Company Limited."

35. But with the passage of the provisions of Section 60 of the Act on February 15, 1971, the Board is no longer limited to the mere expression of sympathy and otherwise powerless to provide any remedy for employees caught in such a situation. The complainants in these proceedings have taken the position that the mere ordering of compensation or damages against the respondent trade union would not provide adequate relief, and in addition, they have requested that the Board further direct that their full seniority rights be restored. This latter relief, it was submitted, could only be provided if the company was made a party.

36. This issue was first raised by way of preliminary objection by counsel for the respondent company who submitted that the company was not a proper party in proceedings of this nature. For the reasons as set out in the majority interim decision in this matter dated July 16, 1975, the Board refused to grant this motion. At the close of the testimony, counsel (who, during the course of these hearings, has filed with the Board "conditional" and "without prejudice" appearances) renewed his motion that the Board dismiss the complaint insofar as it related to the company. Upon hearing the representations of all counsel in this regard on November 26, 1975, the majority of the Board reserved its decision on this motion pending our entertaining argument with respect to the merits. Board Member Bell, in his oral dissent, indicated that he would have granted the company's motion at this time for the reasons as set out in his written dissent in this matter dated July 16, 1975. In this re-

gard, the Board noted for purposes of the record, counsel's position that the company's continued participation in these proceedings was "without prejudice".

37. In initially disposing of this preliminary motion, the Board in Paragraph #12 of its majority decision dated July 16, 1975 ruled as follows:

"Having now carefully reviewed the representations of counsel and taking into account the provisions of Section 79(4)(c) of the Act, and the decision as set out in the *Imperial Tobacco Products (Ontario) Limited* case (supra) [and also the subsequent decision of the Board in this matter at (1974) OLRB M.R. 609 upon a request for reconsideration], we are of the opinion that, in the particular circumstances of this case, the Board's general remedial powers under the provisions of Section 79 could have over-riding implications upon the amendment to the collective agreement executed on September 18, 1972, and hence upon the resultant Plant No. 2 Seniority List as negotiated between the respondents. As the company would be directly affected in the event the Board should see fit to make such an order upon the hearing of the merits, we are not prepared, at this stage of the proceedings, to dismiss this complaint insofar as it relates to the company as a named party to these proceedings."

38. Having now had the benefit of hearing the merits, we are convinced that a Board direction requiring the respondent trade union and the respondent company to "dove-tail" the complainants' seniority would not prove feasible in the circumstances. In this regard, we have considered the lapse of time since the negotiations of the amendment in September of 1972, and the fact that it has now become engrossed in a subsequent collective agreement (Exhibit #3) as negotiated on October 21, 1974 and which, subject to notice, is to continue until June 1, 1976. In our opinion, such an order would tend to cause significant chaos, turmoil and disruption in the respondent's present operations and hence have an adverse effect upon the employees as a whole, which repercussions, we find, would far outweigh any immediate benefits and advantages otherwise accruing to the complainants. For these reasons, and taking into account the fact that there has been no collusion, or connivance on the part of the company with respect to the trade union's arbitrary conduct in this matter, we are now prepared to dismiss this complaint insofar as it relates to the respondent company.

39. The provisions of Section 79(4)(c) of the Act, provides that where the Board is satisfied that the trade union has acted contrary to section 60, "it shall determine what if anything the trade union ... shall do or refrain from doing with respect thereto..." Having regard to these wide powers conferred upon this Board, we direct, in the particular circumstances of this case, that prior to the commencement of negotiations for the renewal of the collective agreement (Exhibit #3), the respondent trade union call a special meeting of the membership for the purpose of considering whether the "dove-tailing" of the complainants' seniority should appear as one of the items in the trade union's proposals to be submitted to the company.

40. During the course of these proceedings, the parties advised the Board that in the event that the Board should find that a breach of the provisions of Section 60 of the Act has occurred, they would be prepared to defer the question of monetary compensation to a later

date. In our opinion, we are satisfied in the particular circumstances of this case that no useful purpose would be served in scheduling a further hearing in this matter. In reaching this conclusion the Board has taken the following matters into consideration:

- (a) the loss of seniority occasioned to these complainants was not for all purposes but rather was restricted and limited to their rights concerning lay-off and recall and job-posting within Plant No. 2;
- (b) not only were all of the complainants returned to work but the evidence of Messrs. Renaud and Baciú (upon which the parties agreed would be representative of all 32 complainants) is to the effect that they have now returned to their original wage scales;
- (c) the assessment of damages in any event, having regard to all of the circumstances, would in our opinion be of such a speculative and nebulous nature such that further protracted hearings in this regard could not be justified.

41. In addition to the Board's order as set out in Paragraph #39 herein, we therefore further direct in the result, upon considering all of the circumstances in this case, that pecuniary relief in the amount of \$1.00 by way of nominal damages, be paid by the respondent trade union to each of the named complainants in these proceedings.

DECISION OF BOARD MEMBER O. HODGES:

1. The majority in paragraphs 22, 24, 26 and 33 make clear that the trade union at no time "acted in a manner that is ... discriminatory or in bad faith in the representation of any of the employees in the unit". I concur with those findings.

2. The majority find, however, that the trade union "acted in a manner that is arbitrary ... in the representation of ... employees in the unit". I do not concur in that finding.

3. I accord much weight to the meaning of the word "arbitrary" in differing with the majority of this Panel of the Board. Arbitrary is a very strong word among working men and women who together comprise trade unions. The Board is a quasi-judicial body administering the law and we must be keenly conscious that here, as much as anywhere, "justice must be *see* to be done". It is clear that the common and generally understood meaning of words have particular importance in conveying the reasons and decisions of the Board to working people. The Concise Oxford Dictionary appears to me to be a reliable reference when considering what words mean to the laypersons who comprise the constituency served by the Board, rather than the strictly legal definition as understood by a lawyer or academic. In looking to the definition of "arbitrary", I consider the 5th Edition of the Concise Oxford Dictionary as offering the commonly held meaning. It is:

Arbitrary, 2. Derived from mere opinion; capricious; unrestrained, despotic; (Law) discretionary.

This trade union has represented these employees continuously since 1940. To find that a ratified amendment to the collective agreement during its terms to meet the exigencies of a

final and complete shut-down of one of two plants to accommodate the problem of an historic seniority separation to be arbitrary, is unwarranted, excessive and abusive of the trade union.

4. In my opinion there is no merit in the requirement that a special membership meeting be called to re-open discussions as to whether the question settled by the controversial seniority amendment to be debated as a contract proposal in the forthcoming negotiations for renewal of the collective agreement. Any two members can do what the majority propose; i.e. put a question to the floor for debate. The direction misleads the complainants in a way that is prejudicial to the entire membership, as well as the complainants. It is not only without merit but potentially harmful to the solidarity of the union. It imposes a divisive issue through force of law.

5. The complainants case is "demand with faint praise" by the finding of \$1.00 damages for each complainant. This minimal award underscores the weakness of the complainants case.

I disagree with the majority on the basis of the testimony of the complainants themselves. They were unable to prove that the union failed to post notices of meetings as required by the local By-laws. Indeed, the grievors admitted that notice of union meetings is normally effected through postings on the plant bulletin board. As to the particular meetings in issue, the grievors did not claim that no notice was posted, but only that they did not see any such notices. The evidence of a customary practice of posting notices, in the absence of any conflicting evidence as to these particular meetings, is sufficient to establish that the notice was posted (See *Rex v. C.P.R. Co.* (1912) 5 D.L.R. 176; *Joy v. Phillips Mills & Co.*, (1916, 1K.B. 849). Nor were they able to prove that normal democratic conduct of union business had not been followed at the meetings where the relevant decisions were taken. After a 13 week strike following the termination of the collective agreement that first incorporated the controversial seniority amendment during its term, the current agreement was made. Surely, if the membership had any reason to change the effect of the amendment, it would have been part of the strike settlement.

7. I question the motive of the complainants in the light of all of the evidence. Their jobs were saved and their wage rates restored *by their union*. The short temper of a Local President caught between a dissident group of members and the majority of the members whose decision saved many jobs is not to be praised, but neither is it a crime to abandon the language of the drawing room in the circumstances evident in the history of this case. My decision is that the evidence is not of sufficient weight to make a finding that the trade union "acted in a manner that is arbitrary". I therefore dismiss the complaint on all three counts.

1406-75-M The International Association of Bridge, Structural and Ornamental Ironworkers, Local Union 700, (Applicant) v. **The Lummus Company Canada Limited, and The Ontario Erectors Association**, (Respondents).

BEFORE D. H. Kates, Vice-Chairman, and Board Members H.J.F. Ade and E. Boyer.

APPEARANCES: *R. Koskie, T. Kutner and P. Doyle for the applicant; R. C. Filion and W. Robb for the Lummus Company Canada Limited; R. B. Cumine and G. Harrison for the Ontario Erectors Association.*

DECISION OF THE BOARD: January 16, 1976.

1. The Board in its decision dated December 31, 1975 indicated it would deliver written reasons for upholding the propriety of the applicant's reference under section 112(a) of the Act.

2. At the outset of the hearing scheduled in this matter counsel for both respondents advised the Board they wished to make representations with respect to the "timeliness" of the referral. Counsel submitted that the grievance filed by the applicant was not properly before the Board in that no prior recourse had been made to the grievance procedure under the terms of the subsisting collective agreement. It was argued that it was not the intention of the Legislature in enacting section 112(a) of the Act to remove or nullify the obligations of the parties to the agreement to pursue the negotiated grievance procedure and comply with the mandatory time limits attached thereto. Because the grievance procedure is the product of a negotiated settlement between the parties the Board ought not upset these contractual obligations unless clearly instructed to do so by the Legislation. Counsel's conception of the design of section 112(a) was to expedite the processing of a grievance to arbitration after the grievance procedure under the collective agreement was exhausted. Upon failing to settle the dispute at that stage of the process, the grievor has the option of electing to proceed to arbitration under the terms of the agreement or to file a reference with the Board. It was argued that the mischief the Legislation with respect to expediting grievances to a finality was removing delays occasioned in the establishment of Arbitration Boards, the scheduling of hearings and the long intervals thereafter before an award issues. The problems of processing grievances under construction industry agreements were not attributable to shortcomings in the grievance procedure but in the aftermath once exhausted. Indeed, the very purpose of time limits attached to steps in the grievance procedure are negotiated with a view to expediting a complaint to arbitration in the event a settlement cannot be reached. For the Board to ignore negotiated time limits not only removes a pre-established procedure for settling grievances but permits a grievor to file a complaint under section 112(a) without making any attempt to resolve the dispute with the other party to the process. The relevant provisions of the Act are as follows:

Section 112(a)

(1) Notwithstanding the grievance and arbitration provisions in a collective agreement or deemed to be included in a collective agreement under section 37, either party to a collective agreement between an employer or employers' organization and a trade union or council of trade unions may refer a grievance concerning the interpretation, applica-

tion, administration or alleged violation of the agreement, including any question as to whether a matter is arbitrable, to the Board for final and binding determination.

(2) A referral under subsection 1 may be made in writing in the prescribed form by the party at any time after delivery of the written grievance to the other party, and the Board shall appoint a date for and hold a hearing within fourteen days after receipt of the referral and may appoint a labour relations officer to confer with the parties and endeavour to effect a settlement before the hearing.

(3) Upon a referral under subsection 1, the Board has exclusive jurisdiction to hear and determine the difference of allegation raised in the grievance referred to it, including any question as to whether the matter is arbitrable, and the provisions of subsections 5a, 7, 8, 9, 10 and 11 of section 37 apply mutatis mutandis to the Board and to the enforcement of the decision of the Board.

Section 37(5a)

Except where a collective agreement states that this subsection does not apply, an arbitrator or arbitration board may extend the time for the taking of any step in the grievance procedure under a collective agreement, notwithstanding the expiration of such time, where the arbitrator or arbitration board is satisfied that there are reasonable grounds for the extension and that the opposite party will not be substantially prejudiced by the extension.

3. Counsel further argued that the intent of the Legislature to compel a complainant to pursue the negotiated grievance procedure may be discerned from the wording of section 112(a)(3) of the Act. That provision empowers the Labour Relations Board in the determination of grievances referred to it under subsection 1 including any question as to whether a matter is arbitrable to exercise the like jurisdiction as an Arbitration Board having regard to the provisions of subsections 5a, 7, 8, 9, 10 and 11 of section 37. More particularly section 37(5a) clothes an Arbitrator with authority unless expressly deprived in the collective agreement, to exercise its discretion to extend time limits under the steps of the grievance procedure contained in the collective agreement notwithstanding their expiry. Counsel therefore suggests that by necessary implication it was intended that for the Board to act in a like manner, a grievor remains duty bound to pursue the grievance procedure and thereby expose himself to the time limits contained therein.

4. Counsel for the applicant argued that section 112(a) plainly permits an aggrieved party to by-pass both the negotiated grievance and arbitration provisions in the collective agreement or deemed to be included by operation of section 37(2). The only procedural obligation imposed by the Legislature under section 112(a)(2) is that the reference be in writing in the prescribed form and that it not be filed with the Board until after it is delivered to the other party. In this respect, it remains at the discretion of the grievor to initiate proceedings under the grievance procedure and "at any time after delivery of the written grievance to the other party" commence proceedings under section 112(a) of the Act. Counsel referred

the Board to judicial utterances with respect to the meaning of the word "notwithstanding" in context of "the grievance and arbitration provisions in a collective agreement ..." referred to in subsection 1 of section 112(a) in urging us to adopt a literal interpretation of the enactment. In this regard it was argued that the objective of the Act was to provide a speedy, expeditious and summary process for resolving grievances under construction industry agreements. Nothing in the wording of the Legislation can be read to limit the thrust of the words "grievance and arbitration provisions contained in a collective agreement". It therefore follows that it was intended that not only the arbitration provisions be pre-empted at the option of the aggrieved but the grievance procedure as well. If the Legislature had intended the Board to adopt the respondents' interpretation it would not have referred specifically in section 112(a)(1) to "the grievance provisions". In support of this proposition counsel referred the Board to excerpts from "*The Report of the Royal Commission on Certain Sectors of the Building Industry*" (December 1974) (hereinafter referred to as "The Waisberg Report") dealing with shortcomings of the grievance and arbitration remedy in the construction industry prior to the enactment of section 112(a). (*The Labour Relations Amendment Act S.O. 1975 C.76 S30* was given Royal Assent on July 18, 1975).

5. Counsel offered the following explanation for the incorporation of section 37(5a) as part of the Board's exclusive jurisdiction under section 112(a)(3) to deal with alleged offences under a collective agreement in a like manner to an Arbitration Board. In the first instance it was urged that section 37(5a) ought not be interpreted as words of limitation restricting the Board's jurisdiction to assume arbitral power. On the contrary the reference to the powers conferred arbitrators under section 37 and incorporated under section 112(a)(3) of the Act were inserted to expand the powers of the Labour Relations Board not otherwise accorded under other provisions of the Act (see sections 91 and 92). Section 112(a)(2) *per se* constitutes the Legislative grievance procedure that must be followed as a condition precedent to filing a reference. Upon satisfaction of these conditions, the Board "shall appoint a date for and hold a hearing within fourteen days after receipt of the referral" and at its discretion may appoint a Labour Relations Officer to confer with the parties and endeavour to effect a settlement. In the event that the settlement procedures contemplated under the Legislation proves successful but for the limitation of time, section 37(5a) may be applied by the Board to extend the mandatory time limits for holding a hearing. In this respect, however, counsel argues that there is no obligation on a grievor once it elects to file a reference to meet with the other party to endeavour to effect a settlement. Indeed it is asserted that there is no obligation under the general provisions of the Act for the parties to negotiate a grievance procedure with a view to settlement as a condition precedent to arbitration. The only obligation under section 37(1) of the Act is that a collective agreement contain an arbitration procedure or it will be deemed to include the specific clause referred to under section 37(2). In the same manner that the incorporation of the terms of a grievance procedure in a collective agreement is a product of voluntary negotiation so the parties may meet and attempt to effect a settlement voluntarily upon a reference being filed in the prescribed form after delivery thereof to the other party. In other words, the Board ought to view its jurisdiction under section 112(a) as an alternative and separate process irrespective of "the grievance and arbitration provision contained in the collective agreement".

6. The Board in its decision dated December 31, 1975 indicated "that the plain intent of section 112(a) of the Act is to establish a dispute settling mechanism separate and apart from any grievance and arbitration procedure provided under the terms of the subsisting collective agreement ...". In making this ruling we were compelled by the clear and sim-

ple wording of the Legislation. Furthermore our ruling purports to reflect the underlying objective of the Legislation in providing a speedy process for resolving disputes arising out of the interpretation of collective agreements negotiated in the construction industry. The statements and findings of "The Waisberg Report" confirm this particular perspective of the purpose of the enactment, (Volume 1 at p. 340):

"Arbitration

Both labour and management complained that current grievance and arbitration procedures are not suitable for the construction industry. There is obviously something wrong when we find that in Ontario the construction industry, which employs about 7 per cent of the total work force, generates only about 1 per cent of the arbitrations. The latter figure is based on the study of arbitration awards filed with the Labour, Management Arbitration Commission of the Department of Labour, between 1 September 1971 and 1 September 1973. *The unions, apparently frustrated by the slowness and expense of the arbitration procedures, have resorted to the use of wildcat strikes and work stoppages.* Matters have now reached the stage where mere threats of such activities are sufficient. Decisions are reached on the basis of expedience."*
[emphasis added]

7. We are therefore of the opinion that adoption of the respondent's interpretation of section 112(a) would operate to defeat the purpose of the Legislation. For example, the grievance procedure if pursued under the terms of the existing collective agreement between the parties could consume approximately 21 days before exhausted. (See; Articles 24.6 and 24.7). At the time, according to the respondents, the grievor, in the event the dispute is not resolved, may elect to proceed to arbitration under the terms of the collective agreement or file a reference under section 112(a). If a reference is filed the Board is obliged to hold a hearing fourteen days after receipt thereof. In other words approximately thirty-five days may elapse before the complaint giving rise to the dispute may be heard. On the other hand in adopting the applicant's approach to the Legislation, so long as the other party has received a copy of the written grievance, we are of the view that the matter may be heard and perhaps resolved within thirty-five days.

*(See; *Green v. Charterhouse Group Canada Limited* [1973] 2 O.R. 677 at p. 732 Per Grant J.) with respect to the propriety of referring to Royal Commission Reports; "While the recommendation of such report cannot be referred directly to determine the intention of the Legislature in enacting the inside provisions (to the Securities Act as a result of "The Kimber Report", 1964), it can be referred to for the limited purpose of determining what was the defect or evil which the Legislation intended to remedy ...)"

8. What then is the purpose of incorporating section 37(5a) as part of the plenary powers of the Board under section 112(a)(3) of the Act? In resolving this question the Board has considered with some concern the respondent's submissions with respect to unwarranted delays that may be committed by a grievor in the delivery of its grievance to the other party. The Board is satisfied that the Legislation contemplates the filing of a reference immediately after delivery of the grievance to the other party or at any stage of the grievance procedure if pursued under the terms of the agreement. We do consider it unfortunate that there is no obligation on the complainant to endeavour to effect a settlement of a dis-

pute prior to launching formal proceedings. Nonetheless we are satisfied the Legislation anticipates that the settlement processes may voluntarily transpire thereafter for a period of fourteen days and with the aid of a Labour Relations Officer. We do not hold it consistent with the aims of the Legislation, however, that a grievor may mangle with impunity in bringing its dispute to a resolve. In our opinion, the Board would be duty bound to require a grievor to provide a reasonable explanation for any delay in the processing of a grievance before us. In the absence of such explanation and having regard to the prejudice that may have been caused the other party to the dispute, the Board may exercise like powers in disposing of the grievance as an arbitrator under the regular provisions of the Act. What the Board considers a reasonable explanation will obviously depend on the facts and circumstances of the case. One explanation that would most likely find favour with us are delays occasioned by sincere and *bona fide* attempts to resolve the dispute prior to initiating proceedings under the Act. We anticipate that a grievor seeking relief under section 112(a) will conduct itself with dispatch in attempting to resolve its complaint. In the event it delays in initiating a grievance or permits a time limit to expire under the grievance procedure contained in a collective agreement once pursued, the Board, in the absence of a reasonable explanation, may take appropriate measures that best suits the circumstances. This in the last analysis is how the Board conceives its powers with respect to section 37(5a) of the Act.

9. Finally, the Board entertained with great interest and concern the representations of the parties on the nature of the Board while exercising its powers under section 112(a) of the Act. We have concluded that any findings made with respect to those submissions ought to be made on another occasion and perhaps in another forum.

10. The instant reference is therefore to proceed to a hearing on its merits in accordance with paragraph 2 of the Board's initial decision.

0176-75-R Hamilton and District Sheet Metal Contractors Inc., (Applicant) v. Sheet Metal Workers' International Association Local Union 537 Hamilton Ontario Branch, (Respondent) v. Electrical Power Systems Construction Association, (Intervener).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members O. Hodges and J. E. C. Robinson, Q.C.

APPEARANCES: *G. Moller for the applicant; J. Fletcher for the respondent; H. A. Beresford for the intervener.*

DECISION OF THE BOARD: January 15, 1976

1. This is an application for reconsideration dated September 16, 1975 filed on behalf of the Electrical Power Systems Construction Association (hereinafter referred to as "EPSCA") requesting review of a Board decision dated August 29, 1975 certifying the applicant association as the accredited bargaining agent for a unit of employers for whose employees the respondent trade union holds bargaining rights.

2. "EPSCA" submits that at no time did it receive notice of the applicant's application for accreditation notwithstanding its active intervention and participation in a previous application involving the same parties and the same unit of employers. Counsel asserts that "EPSCA" is an interested person that ought to have been made a party to these proceedings. It appears that during the course of the applicant's first application an issue arose in connection with "EPSCA's" status to intervene in that proceeding. Because that application was dismissed for reasons immaterial to the status question, the Panel of the Board seized with the issue made no definitive finding. (See Board File No. 5454-74-R).

3. Upon filing a second application for accreditation the applicant association made no reference in *The Application for Accreditation, Construction Industry* (Form 59) to "EPSCA" as an interested party. Paragraph 8 of Form 59 reads as follows:

"The name and address of any employer's organization, trade union or counsel of trade unions *which may have an interest in the application*".

Counsel argues that in the face of the representations and submissions put to the Board in the previous application in connection with "EPSCA's" interest in the outcome of those proceedings, the applicant ought to have referred to "EPSCA" as an employer's organization which "may" have had an interest in the second application. As a result "EPSCA" in being denied "notice" of the second application ought to be permitted at this time to make representations with respect to the propriety of the Board's order accrediting the applicant association.

4. In support of his submission counsel proceeded to demonstrate the nature and extent of "EPSCA's" interest in the proceedings. In this regard it was established to our satisfaction that "EPSCA" represented as members, employers whose names appeared on the Revised Lists of Employers determined in paragraph 6 and 7 of the Board's initial decision. Of these employers only Tricept Limited appeared to be affected by the accreditation proceeding at a time material to the application. Each of the other employers were excluded from the appropriate unit of employers. In this regard, counsel indicated that he was prepared to establish that a number of employers ought to have been considered by the Board in determining the count in that they were engaged in bargaining unit work at The Hydro Electric Project at Nanticoke. In other words, the Board discerned from counsel's submissions a challenge to the lists filed by the respondent in reply to the application.

5. Counsel also referred the Board to *The Ontario Precast Concrete Manufacturer's Association et al* case OLRB M.R. June [1973] 321. In that decision the Board determined that notwithstanding "EPSCA's" failure to establish an interest in the accreditation proceeding (in the sense that it could not satisfy the Board that it represented an employer affected by the outcome) it would permit "EPSCA" to intervene for a limited purpose. To the extent that the appropriate unit of employers could include "the electrical powers system sector", the Board was satisfied that "EPSCA" demonstrated some concern in the outcome of those proceedings. "EPSCA" was therefore permitted to participate in that application for the specific purpose of making representations on the inclusion or exclusion of the electrical powers system sector from the appropriate unit of employers. In a like manner counsel argues "EPSCA" ought to have had status to make representations with respect to the appropriate unit of employers in the instant proceeding.

6. The representative of the applicant association agreed that "EPSCA" did indeed appear and make representations with respect to its status to intervene in the previous application. Nevertheless it was submitted that the instant application constituted a fresh proceeding independent of any obligation on the applicant's part to advise the Board of "EPSCA's" potential interest. Indeed, in surveying the documents it was established that of the named employers alleged to be represented by "EPSCA" for collective bargaining purposes, each had filed upon notification of the application by the Board an *Employer Intervention, Application for Accreditation*, (Form 68) containing the information necessary to proceed with the application. To the extent that these persons were represented by "EPSCA", as agent, the Board ought to be satisfied that the notice requirements with respect to them have been met. Furthermore, it has not been demonstrated that any prejudice has arisen as a result of the failure to advise "EPSCA" of the proceedings.

7. Counsel in reply submitted that the mere filing of the second application so closely on the heels of the first raised the obligation on the applicant's part to inform the Board of "EPSCA's" potential interest. In the circumstances it may very well have been a reasonable assumption by the employers represented by "EPSCA" would have been advised of the proceedings. Had the applicant informed the Board that "EPSCA" "may have had an interest" in the application then its obligation would have been discharged.

8. At the hearing of this matter on November 4, 1975 the Board permitted "EPSCA" to intervene in that it demonstrated an interest in the proceedings and we undertook to provide written reasons therefore. At that time the parties were directed to meet with Mr. D. Aynsley, Labour Relations Officer, with a view to settling the list of employers and any other matter material to the appropriated unit of employers. In the interim the Board's certificate of accreditation was to be held in abeyance.

9. In applications filed under the provisions of the Act, the Board's *Rules on Practice and Procedure* are designed to confer the widest opportunity for persons who can demonstrate an interest in the outcome of our proceedings to participate in the deliberations. In achieving this end, the Board to some extent relies upon the co-operation of the named parties to advise the Board of any potential or likely person who would fall into that category. Although no legal obligation necessarily attaches to a party to inform the Board of potentially interested parties, none-the-less failure to do so may result in delays occasioned by adjournments or applications for reconsideration upon a potentially interested party learning of the proceedings. On the other hand, in most instances it is assumed that a party upon learning of its involvement (potential or otherwise) in a Board proceeding will advise its counsel, representative or agent and duly authorize him to participate in our deliberations in accordance with what may appear to be its best interests. It has never been incumbent upon any one party to safeguard the interests of another party upon being properly advised of the proceedings to the extent of assuring itself that appropriate counsel has been retained. Occasionally the Board, in having regard to our particular knowledge of a proceeding and the relative cohesiveness of the industrial relations community may direct the Registrar to inform a person of his potential interest in the proceeding. Any person, however, that relies upon the Board to provide this service does so at its own peril.

10. In ordinary circumstances we would have anticipated that the employers affected by the instant application and represented by "EPSCA" would have advised "EPSCA" upon being duly notified by the Board. In other words, it is incumbent upon a party to re-

tain and instruct its representative in advance of a hearing and failure to do so may foreclose any further opportunity to intervene for the purpose of reviewing the proceedings. In the peculiar circumstances of this case, however, "EPSCA" made representations to another panel of the Board with respect to its status to intervene in circumstances that can be best described as "on all fours" with the circumstances before this Panel of the Board. The applicant, although under no legal obligation to do so, failed to advise the Board of "EPSCA's" participation in the previous proceedings upon filing of the second application. This panel throughout the proceedings remained ignorant of "EPSCA's" potential interest until the filing of the instant application for reconsideration. The Board, in entertaining counsel's representations, determined that in these peculiar circumstances "EPSCA" ought to have been advised of the proceedings. As a result, the Board, having regard to the evidence of representation submitted in support of its assertion of an interest in the proceedings permitted "EPSCA" to make its submission in review of the Board's decision certifying the applicant as an accredited organization for the appropriate bargaining unit of employers.

11. In referring to the statements made in *The Ontario Precast Manufacturer's Association et al* case (supra), we are of the opinion that it was not the Board's intention to confer automatic status on "EPSCA" to participate (even for limited purposes in an accreditation proceeding. The Board in that case assumed a "lenient" posture with respect to "EPSCA's" status to participate having regard to the relative newness of the accreditation provisions of the Act and the potential contribution that could be made to a determination of the appropriate unit of employers in light of "EPSCA's" particular expertise of the Electrical Powers System Sector of the Construction Industry. We do not construe that decision as a licence justifying the intervention of "EPSCA" or any other person or association in an accreditation proceedings. Whether a person or association ought to be permitted to participate for the reasons cited in the decision referred to is at the discretion and invitation of the panel of the Board seized of the application. And that determination must be made on an *ad hoc* basis having regard to the particular circumstances of the case.

12. As a result of our ruling permitting "EPSCA" to intervene and participate in the proceedings and having regard to the parties' agreement submitted to the Board as a result of the Labour Relations Officer's inquiry, the Board directs that the following employers be added to the lists referred to in paragraph 6 of our initial decision:

Dewar Insulations Inc.
E. S. Fox Limited
Giffin Sheet Metals Limited

13. In all other respects, the Board confirms its original decision certifying the applicant association as the accredited bargaining agent on behalf of the employers constituting the bargaining unit found appropriate in paragraph 5 of its decision.

1282-75-U Pilkington Brothers (Canada) Limited, Pilkington Glass Manufacturing Division, (Applicant v. Those persons named in Schedule "A" of this Application, (Respondents).

BEFORE: Kevin M. Burkett, Vice-Chairman and Board Members J.D. Bell and E. Boyer.

APPEARANCES: *W.J. McNaughton and K. Holland for the applicant; Paul Cavalluzzo, Max Stacey and John MacKenzie for the respondents.*

DECISION OF THE BOARD: January 14, 1976

1. This is an application under section 82 of the Labour Relations Act in which the applicant seeks a declaration and direction by the Board in respect to an unlawful strike.
2. The applicant company, Pilkington Brothers (Canada) Limited is a party to a subsisting collective agreement with the United Glass and Ceramic Workers of North America and its local 295 which covers the named respondents in this application. It was admitted at the hearing that the named respondents engaged in an unlawful strike on November 6, November 7 and November 8, 1975 in violation of Section 63 of the Labour Relations Act. There have been previous unlawful strikes by those in the bargaining unit covered by the collective agreement between the above named Company and union. These unlawful strikes occurred on or about February 18 to 23, 1970, February 26 and 27, 1974, June 4, 1975 and September 3 and 4, 1975.
3. The Board has been reluctant to issue a strike declaration in those situations where the unlawful activity has ceased and the employees have returned to work prior to the date of the hearing. The rationale for this approach follows from the fact that once the strike has ceased the purpose of the strike declaration has been served. There are situations, however, where a declaration has been served. There are situations however, where a declaration will be issued even though the strike has ended. These situations occur when there has been a history of such unlawful activity, where there is a reasonable likelihood of such unlawful activity, where there is a reasonable likelihood of such unlawful activity repeating itself or where the consequences of the unlawful activity extend beyond the immediate bargaining parties. (See the *Acoustical Association of Ontario* case (1975) OLRB July at page 539 and the cases cited therein).
4. Although in this case the unlawful activity has ceased there has been a pattern of such activity and concomitantly there is a reasonable likelihood that the pattern will continue. In these circumstances the Board finds that on November 6, 7 and 8, 1975 the named respondents engaged in an unlawful strike contrary to section 63 of the Labour Relations Act and the Board so declares. Furthermore, in the circumstances *the Board directs* that the named respondents and anyone having knowledge of this order cease and desist from engaging in any unlawful strike or doing any act which they know or ought to know as a probable and reasonable consequence of such acts would result in an unlawful strike by the employees of Pilkington Brothers (Canada) Limited, Pilkington Glass Manufacturing Division.
5. Having made a declaration and direction pursuant to section 82 of the Act it is incumbent upon the Board to outline the possible enforcement mechanisms which might follow from a breach of a Board direction. Section 83a of the Labour Relations Act provides:

“The Board shall file in the office of the Registrar of the Supreme Court a copy of a direction made under section 82 or 83, exclusive of the reasons therefor, whereupon the direction shall be entered in the same way as a judgment or order of that court and is enforceable as such.”

Accordingly, a section 82 direction is to be enforced as if it were an order or judgment of the Supreme Court of Ontario. Several of the Rules of Practice speak to the enforcement of judgments and orders of the Supreme Court. Rule 569 reads:

“A judgment requiring any person to do an act, other than the payment of money, or to abstain from doing anything, may be enforced by attachment or by committal.”

The distinction between committal and attachment is as follows: A person is committed for doing what he ought not to do and attached for not doing what he was ordered to do (See *Link v. Thompson* (1917), 40 D.L.R. 222). The effects of attachment and committal are the same: The person committed or attached is imprisoned. Rule 569 would be invoked by an interested party making a motion before a judge sitting in court. (See Rules 207 and 209). A further sanction against a person disobeying a judgment of the court is contained in Rule 577 which states:

“Any corporation or individual disobeying a judgment or guilty of any other contempt of court may be fined and such fine may be in lieu of or in addition to punishment by attachment, committal or sequestration.”

Thus a person who refused to abide by a section 82 direction would risk being imprisoned, fined or both. Imprisonment is more likely to be ordered where the disobedience amounts to a wilful and serious flouting of the court's order. This type of grave disobedience is sometimes referred to as criminal contempt. (See *Tony Poje v. A-G. British Columbia* (1953) 2 D.L.R. 785).

6. There is no reported Ontario case dealing with the issue of whether the refusal to obey a direction issued by the O.L.R.B. constitutes either a civil or criminal contempt. However, the courts have held that the failure to obey an injunction issued by the court enjoining picketing in a labour dispute can amount to criminal contempt and is properly punishable by committal or attachment. In *Tilco Plastics Ltd. v. S. Kurjat et al* (1966) 2 O.R. 547, aff'd (1967) 1 O.R. 609n, a picketing case, the learned Chief Justice ordered the committal of several persons for two months and stated at 576:

“Because of the large numbers of persons involved and the public nature of the Court Order, patently there was a public depreciation of the authority of the court and of the administration of justice. For that reason the contempt proved against all the respondents is criminal contempt as distinct from civil contempt.”

These authorities underline the risk involved when an order of the court is wantonly flouted. Since a section 82 direction is functionally comparable to an injunction, the courts might be inclined to punish those flouting it in a comparable way.

7. The courts have also made it clear that those having knowledge of the contents of an injunction as distinct from those specifically named in it are liable for contempt if they disobey it. *Gale C.J.H.C. in re Tilco Plastics Ltd. supra*, affirmed this "well-established" principle and stated at 569.

"... although persons who are not parties to the action in which an injunction is granted cannot be in breach for that order, they can be found guilty of contempt for knowingly acting in contravention of it."

Further on, he articulated the rationale for the rule at 569:

"All members of the public are bound to obey court orders in the sense that they must not deliberately act in defiance of them or aid others to do so. If it were otherwise, it would be a simple matter for the actual parties involved in the granting of a court order to enlist the aid of others and to thereby circumvent the order."

This principle also would seemingly apply to the enforcement of a section 82 direction.

8. Finally reference must be had to s. 116 of the Criminal Code which provides:

"Every one who, without lawful excuse, disobeys a lawful order made by a court of justice or by a person or body of persons authorized by any Act to make or give the order, other than an order for the payment of money is, unless some penalty or punishment or other mode of proceeding is expressly provided by law, guilty of an indictable offence and is liable to imprisonment for two years."

9. In summary, anyone violating a section 82 direction might expose himself to committal, fine, or criminal prosecution for an indictable offence.

1308-75-U London Civic Employees' Local Union No. 107, Canadian Union of Public Employees (Complainant) **The Corporation of the City of London**, (Respondent).

BEFORE: K.M. Burkett, Vice-Chairman, and Board Members J.D. Bell and O. Hodges.

APPEARANCES: *Ted Wohl and Gary Lucas for the complainant, Gerald B. Hyde, William E. Connolly and Joseph M. Young for the respondent.*

DECISION OF K.M. BURKETT AND O. HODGES: January 9, 1976

1. This is a complaint brought under Section 79 of the Act in which the complainant alleges that the grievor has been dealt with by the respondent contrary to the provisions of section 58(a) of the Labour Relations Act.

2. The evidence before the Board establishes that the respondent employer under the terms of its collective agreement with the applicant union (Exhibit #1) maintains a complement of temporary employees who are not covered by the terms and conditions as set out in the Agreement other than by Article 2, Union Security and Check-off, Article 12, Holidays and Article 13 Vacation. Article 23, entitled "*Temporary Employees*" reads in part as follows:

- “(a) A Department Head may hire personnel on a temporary basis for not more than 30 consecutive weeks for special projects, or to cover leave of absence, or during periods of heavy work load, or in case of illness of an employee in the bargaining unit, or for vacation relief or in cases of emergency. The temporary period of employment aforementioned shall not be considered interrupted by a lay-off of less than 15 working days.
- (b) The engagement of temporary employees may be extended by agreement of the Parties.
- (c) The rate of pay for a temporary employee shall be the starting rate according to said Schedule “A”. A temporary employee shall not be covered by any of the other terms and conditions of this Agreement, save for Article 2, Article 12 and Article 13.”

The respondent submitted a business record showing the numbers of permanent and temporary employees of the Corporation dating back to 1967 and broken down by week. The exhibit establishes cyclical fluctuation in the complement of temporary employees and also establishes that in October of this year the complement of temporary employees was reduced by some 32 persons. Mr. Connolly, the general superintendent of maintenance and construction, testified on behalf of the respondent that the fluctuations are occasioned by the peak requirements for vacation relief, the seasonal nature of the work and by budget considerations.

3. Mr. Connolly also testified that in laying off temporary employees for lack of work (as distinct from the contractual requirement of Article 23 to terminate within a 30 week period) the employer has regard to service (as distinct from seniority as provided for in the collective agreement) other than if there are special skill requirements. Mr. I. Young the superintendent of sanitation, somewhat contradicted Mr. Connolly in emphasizing that in laying off for lack of work “we go through an elimination system with respect to skills”. He stated, “we pick the best available men at the time.” He made no mention of service.

4. The evidence establishes that Mr. M. Brett, the grievor, was first hired as a temporary employee on April 10, 1974, and was laid off because of the 30 week stipulation in Article 23 on October 11, 1974. He was rehired after an elapse of 15 working days, also as stipulated in Article 23, on November 5, 1974, whereupon the cycle repeated itself. He worked until May 20, 1975, whereupon he was laid off and rehired on June 10, 1975. His letter of re-hire (Exhibit #9) dated May 26, 1975 stated, having regard to Article 23, “unless your employment is terminated earlier for any reason, you are advised that your employment will be terminated as of 4.30 p.m. on December 23, 1975.” Mr. Brett however was advised by means of an undated memo (Exhibit #2) hand delivered to him on October 10, 1975 and

signed by Mr. W.E. Connolly, the General Superintendent, that he was to be terminated effective October 17, 1975 because of a lack of work. The evidence establishes that he was terminated on October 17, 1975.

5. The respondent filed two exhibits (numbers 3 and 4) and both Mr. Connolly and Mr. Young testified with respect to the work record of the grievor. The witnesses referred to the grievor as a good worker who would be rehired when work became available. Exhibit #3 dated October 17, 1975 and signed by Mr. Young and the grievor's foreman establishes that the work, conduct and ability of the grievor were all good. The "yes" box was checked after the question, "Would you rehire?" and the following remark is noted, "Good attendance and a very willing worker." Likewise, Exhibit #4, a memo from both Mr. Young and the grievor's foreman to Mr. H. Smily establishes that the work performance of Mr. Brett was not lacking and was acceptable to the employer. Mr. Connolly acknowledged that it was not necessary for a temporary employee laid off for lack of work to reapply for employment. His records are kept on file and he is rehired when work becomes available.

6. The evidence establishes that Mr. Brett, the grievor, had become disenchanted with the treatment afforded temporary employees. He wrote an article entitled "The Temporary Rip-Off" dated August 29, 1975 which appeared in the local union publication of September 9, 1975. The article was unsigned. He was chosen as a local union delegate to both the C.U.P.E. National Convention and the O.F.L. Convention at a meeting of the local union held on September 7, 1975; the first temporary employee to be so chosen. A request for leave of absence was made to the respondent by the local union in order that he might attend. At a second local union meeting held on September 17, 1975 Mr. Brett submitted a list of bargaining proposals (Exhibit #16) which, if negotiated, would do away with the "Temporary Employee" classification. These proposals although adopted unanimously by the local membership on September 17 were not forwarded to the employer until some time in early November.

7. Both Mr. Connolly and Mr. Young testified that they had never dealt with the grievor as a union official. Mr. Connolly testified that he was on vacation during the month of September and did not have knowledge of the union leave of absence request on behalf of Mr. Brett and that although he sometimes reads the union publication he did not read the September issue which contained the article on Temporary Employees. Mr. Young, however, admitted that he knew that Mr. Brett had been chosen to go to the two conventions and that the secretary to the City Engineer had commented to him when processing the leave of absence request that it was for a temporary employee. Mr. Young acknowledged that made no difference to him. Mr. Young acknowledged that he had read the article on "Temporary Employees" but attributed it to the Union president and editor, Mr. Lucas. The first line of that article reads, "Hot spit", I said to myself when I got hired on the city about one and a half years ago." Mr. Lucas is a regular employee in the employ of the city for more than six years, whereas Mr. Brett had been a temporary employee since April of 1974. The Board questions the candour of Mr. Young in attributing the article to Mr. Lucas.

8. The evidence establishes that a number of temporary employees with less "service" than Mr. Brett were retained by the Corporation in preference to Mr. Brett and that certain others were hired during the period in question. Those retained with less service than Mr. Brett were:

(1) Mr. Sawyer: who was first hired as a temporary on July 15, 1975 (Exhibit # 12) and who has worked as a garbage collector with the Sanitation Department.

(2) Mr. J. Wilson: who was first hired as a temporary on July 3, 1975 (Exhibit # 12) and who worked with the Streets Department until two weeks before Mr. Brett was laid off from the Sanitation Department at which time he was transferred to the Sanitation Department.

(3) Mr. R.A. Penessi: who was first hired as a temporary on June 17, 1974 (Exhibit # 11) who returned to school during the period August 23, 1974 to July 3, 1975 at which time he was rehired as a temporary employee. He was trained on the weigh scales after the layoff of the grievor. This position had been occupied by the grievor prior to his termination.

Those hired or rehired with less service than Mr. Brett, subsequent to his lay-off, were:

(1) B. Neilson: who although laid-off on October 24, 1975 was rehired as a permanent employee on October 27, 1975 (Exhibit # 5).

(3) S. Pettitt: who was first hired as a temporary employee on July 2, 1974 (Exhibit # 11) and was laid-off for lack of work on January 4, 1975 (Exhibit # 14). The grievor remained at work during this lay-off for lack of work of Mr. Pettitt. He was rehired as a temporary employee on April 21, 1975 (Exhibit # 15) and although laid-off in October of this year was rehired on November 4, 1975 (Exhibit # 5) and assigned to pollution control where he underwent a two week training program to qualify him to take samples.

(3) R. Boyle: who was hired as a new temporary on October 23, 1975.

9. The respondent established that Mr. B. Neilson had acquired certain skills in his previous employment at the Dearness Home and as a packer operator with the Western Fair Board. Furthermore he holds a chauffeur's licence and did on October 28, 1975 pass the Vehicle Driving Test requirements of the respondent employer (Exhibit # 6). Mr. Young testified that Mr. Penessi had a chauffeur's licence and was going to take a driving test. There was no evidence adduced by the respondent with respect to whatever special skills may have been possessed by those listed in paragraph 8 other than with respect to Mr. Neilson and Mr. Penessi.

10. The complainant has alleged a violation of section 58(a) of the Act. That section reads:

"58. No employer, employers' organization or person acting on behalf of an employer or an employers' organization,

- (a) shall refuse to employ or to continue to employ a person, or discriminate against a person in regard to employment or any term or condition of employment because the person was or is a member of a trade union or was or is exercising any other right under this Act;"

11. This complaint was brought before the Board under the provisions of section 79 of the Act. This section has been recently amended and provides that in complaints of this type the burden of proof lies upon the employer to establish, on the balance of probabilities, that he did not act contrary to the Act. Section 79 (4a) reads:

“On an inquiry by the Board into a complaint under subsection 4 that a person has been refused employment, discharge, discriminated against, threatened, coerced, intimidated or otherwise dealt with contrary to this Act as to his employment, opportunity for employment or conditions of employment, the burden of proof that any employer or employers’ organization did not act contrary to this Act lies upon the employer or employers’ organization.”

12. The Board has long held that in complaints such as this anti union motivation does not have to be the sole reason or even the predominant reason for the activity complained of for the Board to find that the Act has been breached. A recent decision of the Ontario High Court in considering the comparable section of the Canada Labour Code upheld this interpretation.

“In considering an enactment devoid of the words, “sole reason,” or “for the reason only” and resting only on the word “because”, the Court must take an expended view of its application. If the evidence satisfies it beyond a reasonable doubt that membership in a trade union was present to the mind of the employer in his decision to dismiss, either as a main reason or one incidental to it, or as one of many reasons regardless of priority, s.110(3) of the Canada Labour Code has been transgressed.”

See the *Bushnell* case (1974) OR (2d) at page 442. This decision was upheld in a decision of the Court of Appeal dated April 4, 1974 and found at 4 OR (2d) 288.

13. Furthermore, in the circumstances of this case the Board states that these proceedings are not a substitute for “just cause” proceedings under the grievance and arbitration provisions of the collective agreement which are not open to the complainant by virtue of his “temporary employee” status. This Board does not have the authority to make a determination with respect to the fairness of the actions of the respondent. The singular question before this Board is whether or not the respondent in laying-off the grievor was in any way motivated by his trade union activities.

14. The effect of the reversal of the onus as embodied in section 79(4) has been well stated in the *Barrie Examiner* case, dated October 6, 1975, Board File 0597-75-U wherein the Board stated:

“Given the requirement that there be absolutely no anti-union motive, the effect of the reversal of the onus of proof is to require the employer to establish two fundamental facts - first, that the reasons given for the discharge are the only reasons and, second, that these reasons are not tainted by any anti-union motive. Both elements must be established on the balance or probabilities in order for the employer to establish that no violation of the Act has occurred.”

Simply put, the respondent must put forward a credible explanation free from anti union motive which is established on the balance of probabilities as the only reason or reasons which precipitated the impugned activity. The Board has also stated that:

“... in assessing an employer’s declared motivation due regard may be had to the peculiarities of the context surrounding an employer’s actions. To the extent that peculiarities exist, and cannot be reasonably explained an employer may fail, by a process of inferential reasoning, to satisfy the burden placed upon it.”

See *Fielding Lumber Case* (1975) OLRB rep. September at page 675.

15. Whereas prior to the reversal of the legal burden a complainant had to establish either directly or by inference that the respondent employer had knowledge of trade union activity it is now incumbent upon the respondent to prove, on the balance of probability, that it either did not have knowledge of the Trade Union activity and therefore could not have been motivated by it or, that in spite of its knowledge it acted without anti union motive. In the instant case the Board finds that Mr. Young, the sanitation superintendent who forwarded the name of the grievor for lay-off, knew that the grievor was active within the union and that he had become an advocate of the “temporary employees.” The evidence also establishes that the matter of “temporary employees” was an issue between the parties in the last round of negotiations. The respondent must establish that in the face of its knowledge of Mr. Brett’s activities its decision to lay-off was in no way motivated by his activities on behalf of the “temporary employees”.

16. The Board accepts that both Mr. Neilson and Mr. Penessi have skills which would justify their employment in preference to that of the grievor even though they had less “service”. Mr. Neilson had accumulated skills in his previous employment and had qualified himself as a driver. Mr. Penessi, although not qualified to drive, possessed a chauffeur’s licence which would make him a more valuable asset to the employer.

17. Mr. Connolly stated that “temporary employees” who are laid-off for lack of work do not need to apply for re-employment but are offered it when work becomes available. He also testified that the lay-off of “temporary employees” for lack of work is done with regard to service other than if there are special skill requirements. Mr. Young testified that he went through “an elimination system” with respect to skills. In the face of this testimony and the excellent employment history of Mr. Brett, the Board finds that the continued employment or subsequent hiring of Messrs. Sawyer, Wilson, Pettitt and Boyle are “peculiarities” which must be reasonably explained if the respondent is to satisfy the onus. The respondent did not reasonably explain the continued employment or subsequent hiring of these persons who had less “service” than the grievor. There was no probative evidence led with respect to the skills or qualification of these persons relative to those of the grievor. The Board must find, therefore, that the respondent has failed to prove on the balance of probabilities that the lay-off of Mr. Brett was not at least in part motivated by his union activity on behalf of temporary employees.

18. The Board finds that the respondent has violated section 58(a) of the Act and directs that Mr. Brett be reinstated into the employ of the corporation. The Board will remain seized of this matter in the event the parties are unable to agree on compensation or in the event of any other difficulty with the terms of the reinstatement.

DECISION OF BOARD MEMBER J.D. BELL:

1. I dissent.
 2. Three representatives of the respondent, all laymen, appeared before the Board and offered a frank, candid explanation for the reasons for the lay-off of 32 temporary employees during the month of October, 1975, one of whom was the grievor, Mr. Brett. They explained the reasons for using temporary employees and what the practice had been for at least thirty years.
 3. Further, the collective agreements that have been signed over all these years have provided for temporaries and it is clear that no seniority rights were provided. The two witnesses for the respondent agreed there is an informal acknowledgement of worked service but offered different interpretations of this. Mr. Connolly stated, "service is a consideration with skill." Mr. Young however said, "the man you need at the time is the priority."
 4. Therefore, I do not think there is anything peculiar to be explained about the lay-off of Mr. Brett.
 5. Turning to the union activity of the grievor, I find it difficult to understand how his election to attend two union conventions would disturb a respondent which has had a bargaining relationship with the union for over thirty years.
 6. His authorship of the article in the September issue of the union paper was now known to Mr. Young and I think the majority decision is wrong in questioning the candour of Mr. Young in attributing the article to Mr. Lucas. When pressed in cross-examination by counsel for the grievor why he did not think it was Brett rather than Lucas, he asked, "a man with a university education like Mr. Brett using such language?"
 7. Finally, if the respondent wished to rid itself of Mr. Brett because of his union activity, it merely had to wait until December 23rd when his term of employment ended according to his hiring document.
 8. I feel the respondent gave a creditable explanation for the lay-off of Mr. Brett and satisfied the onus as contemplated by the legislation, section 79(4)(a), one of the recent amendments to the Labour Relations Act.
 9. This application should be dismissed.
-

7390-74-R Canadian Workers Union, (Applicant) v. **Canron Ltd., Eastern Structural Division**, (Respondent) v. Shopmen's Local Union No. 743 of the International Association of Bridge, Structural and Ornamental Iron Workers, (Intervener).

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Member P. J. O'KEEFE. January 7, 1976.

1. In reply to the Board's direction as contained in its decision dated December 10, 1975, counsel for the respondent company, in his letter dated December 11, 1975, has advised the Registrar that in the circumstances, "we do not intend to call any further evidence in support of the allegations as set out in our letter of March 25, 1975".

2. During the course of these proceedings, counsel for the intervener also indicated that he would not be proceeding with his allegations as contained in Paragraphs (a) and (b) of his letter dated March 13, 1975.

3. Accordingly, it would appear that the testimony which has been adduced before this Board with respect to the remaining charges as filed by counsel for the intervener, essentially relates to allegations of intimidation on the part of the applicant during the course of its organizational campaign as initially set out in his letter dated April 17, 1975 and further particularized in his subsequent letters dated May 21 and June 25, 1975, respectively. This latter letter provided as follows:

"Further to the allegations made in connection with Mr. Gino DeSantis, evidence will further be given that statements were made at various times in the months preceding the applicant's certification application at the plant premises of the respondent company to the employees by Messrs. Tom Conlan, Claude Brown and Barry Lord that they would lose their jobs if they did not join the applicant."

The only witness to be called in support of these charges was Mr. Gino DeSantis. It is upon his sole testimony, that the intervener must rely upon, in urging this Board to find that the presumption of status, emanating from the certificate of the Board as initially issued to the applicant in the *N. C. Press Ltd.* case (Board File No. 6380-74-R) and in the *Franklin Structural Steel Limited* case dated May 13, 1975 (Board File No. 0156-75-R)).

4. In these circumstances, the applicant has vigorously attacked the credibility of Mr. DeSantis, the person who has in the past acted both in the capacity of National Chairman in the applicant and Steward in the intervener trade union. This was also the person who, shortly prior to the taking of the pre-hearing representation vote in this matter, not only endeavoured to disassociate himself from the applicant but also took steps to actively oppose it.

5. Mr. DeSantis' testimony in chief is to the effect that he and other employees were threatened by certain officials of the applicant that if they did not join or continue to remain members of the applicant, they would lose their jobs upon it becoming certified.

6. Upon cross-examination, Mr. Sack's letter dated June 25, 1975, (see Paragraph #3) was put to Mr. DeSantis, and he was asked upon what date he had so advised counsel in this regard. The witness replied that he had informed Mr. Sack of these particulars sometime in March. At this point, the witness was excluded from the hearing room at which time Mr. Sack stated that he felt that it was his duty to advise the Board that Mr. DeSantis had been mistaken and that the matter was first brought to Mr. Sack's attention sometime during his course of questioning the witness at the previous hearing on May 26, 1975.

7. It should be noted in this regard, that during the course of the hearing of this matter on September 9 and 10, 1975, the Board entertained the representations of the parties concerning the intervener's motion to set aside the subpoena issued to Mr. Sack at the request of the applicant. In granting the motion to set aside that subpoena, the Board took into consideration the circumstances surrounding the taking of the Mr. DeSantis' affidavit dated March 18, 1975, whereupon, we concluded, *inter alia*, that such circumstances in any event involved collateral issues which were not directly relevant to the charges as filed by Mr. Sack.

8. Nevertheless, we find that Mr. DeSantis' answers regarding questions put to him on cross-examination with respect to the preparation of this affidavit (filed as Exhibit #4) to be totally unsatisfactory. The gist of Mr. DeSantis' testimony in this regard, is that at about the time that he had been visited by certain officials of the applicant at his home on March 16, he had made up his mind to see a lawyer in order to formalize the resignation of his chairmanship in the applicant. He was working the 4 to 12:30 shift that week. On the morning of March 18, he left his home, with the specific intention of observing the helicopter which was engaged in the final erection of the CN Tower at the time. However, the helicopter was not utilized on this particular morning, whereupon Mr. DeSantis drove his car on to a parking lot in the Queen & University area. There he parked his car and in his words, while "just walking around", he observed a steel or brass sign affixed to the building at 85 Richmond Street bearing the names of certain lawyers. Upon entering this building, he took the elevator to a certain floor where he met an older lawyer who advised him that he was not informed in labour matters. Mr. DeSantis then proceeded down the elevator and upon exiting therefrom, he saw Mr. Sack's name and office location on a plaque, whereupon he then attended at Mr. Sack's office. Although Mr. DeSantis conceded that he was aware at this time that Mr. Sack was the "Ironworkers' lawyer", he vehemently denied any suggestion that his presence at this time in the building was anything more than a mere coincidence. Having carefully reviewed the totality of his testimony, we must conclude, in the circumstances, that Mr. DeSantis did not provide this Board with a credible explanation concerning the course of events leading up to his attendance at Mr. Sack's office.

9. Further, we find other questionable areas in his testimony. Mr. DeSantis appeared extremely confused during the course of his cross-examination concerning the immediate events surrounding the execution of his affidavit. At this point and in the presence of the witness, Mr. Sack advised the Board that the affidavit was prepared by his partner. The document, he stated, was then explained to Mr. DeSantis by an "independent" lawyer and it was subsequently sworn to by another "independent" lawyer. However, when asked to comment upon Mr. Sack's representations, Mr. DeSantis, after a series of questions put to him in this regard, could effectively recollect seeing only one "independent" lawyer.

10. During the course of his cross-examination Mr. DeSantis was adamant in his position that the wording utilized in the affidavit was his own. In this respect, he sought to give the Board the impression that he was thoroughly familiar with the use of such words as “desirous” and “hereinafter”, and in the witness’ words “I use them everyday”. We note however that Mr. DeSantis is not a native Canadian but rather immigrated to this country from Italy in his early adulthood. We also have taken note of the manner in which Mr. DeSantis gave his testimony, and at one point during the course of these proceedings, he was asked if he would require the services of an interpreter. Be that as it may, we are satisfied that the witness was not entirely candid in this area of his cross-examination.

11. Mr. DeSantis further testified that his main concern in attending before a lawyer at this time, was “to make it legal”. However, it was never established to our satisfaction as to why he found it necessary to adopt this particular course of action in order to achieve his purpose of resigning his chairmanship and relinquishing his membership in the applicant. In any event, it appears that once the document was completed, and prior to mailing it to the applicant, Mr. DeSantis took it upon himself to remove the backing sheet which contained the name of Mr. Sack’s firm. When pressed for an explanation as to why he deleted this page, he simply replied that “I did it because I was feeling to do it that way, that’s all”. He denied that in these circumstances there had been any deliberate attempt on his part to disguise from the applicant the fact that he had obtained the services of the “Ironworkers’ lawyer” in the preparation of this affidavit. In the circumstances, we find such testimony to be unacceptable.

12. In our opinion, these deficiencies in Mr. DeSantis’ testimony must also be viewed in the light of his personal involvement in this matter, during which immediately prior to the representation vote, he was described in the applicant’s propaganda as (Gino) “Venduto”, which loosely translated from the Italian, means a betrayer, traitor or person who has “sold out”. It was the portrayal of this Judas-like image, which Mr. DeSantis subsequently sought to dispel. An image, we note, which confronted him not only prior to the representation vote, but which was carried over into these proceedings, when, just as he was about to enter the witness box to initially commence his testimony before us, a person in the audience vindictively shouted out to him the name “Venduto”.

13. Mr. DeSantis’ involvement in this matter moreover was not limited simply to clearing his name in response to the applicant’s personal attacks against his honour and integrity. He testified that not only had there been threats of violence against him by members in the applicant, but he also implied, during his early testimony, that the applicant may have been implicated in certain acts of vandalism with respect to his car. In this regard, he advised the Board that he would be seeking police protection. Further in his testimony he attributed the actions of certain officials of the applicant as resulting in the possible breakdown of his marriage.

14. In our opinion, in assessing the credibility of Mr. DeSantis’ evidence as we observed by his demeanour in the witness box, the manner in which he testified and the reasonableness of that testimony, we must take into account the total background situation. In this regard, we find that although he had the advantage of seeing matters from “both sides of the fence” (insofar as he occupied at various times official positions in both the applicant and intervener trade union), he was nevertheless, and for the reasons as set out above, not an impartial and objective witness. Although we can sympathize with the pressures imposed

upon Mr. DeSantis, both prior to and during the course of giving his testimony (the Board on August 9, 1975, pursuant to the provisions of Section 23(2) of *The Statutory Powers Procedure Act*, directed that his cross-examination be precluded), the Board nevertheless, in all of the circumstances of this case, cannot place any great reliance upon his testimony as a whole.

15. In the result, we must conclude that the intervener trade union and the respondent company have failed to adduce sufficient evidence before us in order to rebut the presumption of trade union status accorded to the applicant pursuant to the provisions of Section 94 of the Act, and all charges as filed in this regard are therefore dismissed.

16. During the course of these protracted proceedings the applicant, has indicated that it would not only be challenging the status of the intervener trade union to participate in these proceedings, but that further, it would be alleging "collusion" between the intervener trade union and the respondent company during the course of its organizational campaign. However, the Board at the hearing of this matter of August 1, 1975, specifically advised the applicant that its allegations had never been formalized and that the required particulars had not been properly supplied to the other parties. Having now had an opportunity to carefully review the totality of the evidence as adduced, we are satisfied that the applicant has failed to comply with the provisions of Rule 47 of the Board's Rules of Procedure. In all of the circumstances, we further find that no useful purpose can be served in permitting the applicant to make any additional representations in this regard, and its allegations are therefore dismissed.

17. Accordingly, the Registrar is directed to unseal the ballot box containing all of the ballots cast during the course of the pre-hearing representation vote conducted in this matter, and to proceed with an immediate counting of the ballots as contained therein.

DECISION OF BOARD MEMBER J. E. C. ROBINSON, Q.C.

1. I dissent.

2. With the exception of that portion of the majority decision as set out in paragraph 16 therein, I am unable to agree with my colleagues in their ultimate finding.

3. The allegations of the respondent and intervener to these proceedings were that, *inter alia*, there had been instances of intimidation by the applicant both during the course of its organizational campaign and preceding the holding of the representation vote.

4. In addition it was alleged that the presumption of status given by the Board in earlier proceedings before it had been rebutted by certain fraudulent misrepresentations made to this Board in an earlier case regarding the formation of the applicant trade union.

5. While the evidence called by the intervener was adduced mainly to show intimidation by Messrs. Perly, Browne, Conlon, Lord and others, the cross-examination of one Gino DeSantis elicited considerable evidence in support of the allegations of fraudulent misrepresentation to the Board in the earlier hearing wherein the Board granted trade union status to the applicant.

6. The evidence called in support of the allegations of intimidation by the applicant trade union was through the witness, Gino DeSantis, the former national chairman of the applicant trade union, and a person who had been present through many meetings dealing with the formation of this union and the preparations made before its attendance before this Board in an effort to attain trade union status.

7. The evidence of DeSantis was heard by the Board over many days of hearing, indeed the cross-examination itself lasted some 5 days before the Board found it necessary to terminate such cross-examination under the power given to it by the provisions of The Statutory Powers Procedure Act.

8. There would seem to be little doubt that if the acts of intimidation as alleged were proven through the witness, DeSantis, this application must be dismissed based upon the earlier jurisprudence of this Board (S88 *Walter E. Selck of Canada Ltd.* OLRB Rep. June [1964] p.138; *VR/Wesson Limited* OLRB Rep. November [1968] p.811; *Milnet Mines Limited* case (1953) CCH Canada Labour Law Reporter ¶17,063; *Canadian Fabricated Products Limited (Stratford)* case, 54 CLLC ¶17,090). To do otherwise would be to accept as satisfactory proof of membership, documentary evidence obtained from organizers who engaged in threats, coercion and intimidation.

9. Likewise, if the allegations of fraud concerning the formation of the applicant were proven through the witness, DeSantis, the presumption of trade union status afforded earlier by this Board to the applicant is rebutted and it would seem that the applicant ceases to enjoy such status.

10. Again, it must be both remembered and stressed that the *only vive voce* evidence heard by this Board relating to the allegations of the intervener and the respondent came from the mouth of the witness DeSantis. My colleagues have chosen to reject *all* of his evidence, based, in large part, upon his evidence concerning his attendance at the offices of counsel for the intervener, a matter entirely collateral to the main issues before the Board, and only a small portion of the detailed evidence given by DeSantis over many days of questioning before this Board.

11. I, too, must confess that I have some difficulty in accepting the veracity of that portion of the evidence but without any evidence to rebut the evidence given by DeSantis *as a whole*, I am unable to reject his testimony even in part. For indeed, the evidence upon the collateral matter may very well be accurate and his attendance merely a coincidence which is difficult to explain.

12. The evidence of DeSantis may be presumed to be credible in the material areas because in such areas, the charges were against, among others, Claude Browne and Gary Perly.

13. Claude Browne, at various times throughout these proceedings, acted as advisor for the applicant and as its counsel. And yet, confronted with the evidence of fraud and intimidation, he declined to present himself as a witness to deny the allegations against him.

14. Gary Perly, at various times throughout these proceedings acted as witness, and counsel for the applicant union. And yet, confronted with the evidence of fraud and intimi-

dation, he specifically refused to testify as a witness to deny allegations against him, even though called by his own counsel to do so.

15. Both the Courts and the Board have commented upon the refusal of persons knowledgeable in the issues giving rise to the proceedings in failing to explain the circumstances which are adverse in their interest and both have suggested that the forum may draw the inference that the unproduced evidence would be contrary to their case and that if the circumstances surrounding the issues are entirely within their knowledge, they cannot be heard to complain if the inferences drawn from the established facts are not favourable to them. (See *Murray v. Saskatoon* (1952) 2 D.L.R. 499 at 505; *Busuttel v. Diamond T. Trucks (Toronto) Ltd. et al* (1969) 2 D.L.R. (3rd) 167 at 168; *Beaver Engineering Limited* case [1973] OLRB Rep. p.57 at p.60; *F. G. Bradley Co. Limited* case [1973] OLRB Rep. June 342.

16. In view of the mass of positive evidence given at length over the course of these proceedings against the applicant trade union, and in view of the apparent refusal by both Browne and Perly to explain and/or rebut such testimony, I am prepared not only to accept the evidence of DeSantis (evidence which I believe to be credible in all material areas) but also to draw the inference that in the absence of rebuttal from either Browne and/or Perly, my acceptance of the evidence of DeSantis is correct. To do otherwise is not only to reject the evidence of DeSantis, but to vilify him amongst his peers.

17. As a result, therefore, I find that the allegations of intimidation have been proven and the application must be dismissed.

0804-75-R International Union, United Automobile, Aerospace and Agricultural Implement Workers, (UAW), (Applicant) v. Daymond Limited, (Respondent) v. Group of Employees, (Objectors).

BEFORE: Rory F. Egan, Acting Chairman, and Board Members E. Boyer and J.E.C. Robinson, Q.C.

APPEARANCES: *H. C. Anderson for the applicant; J. T. Heather for the respondent; no one for the objectors.*

DECISION OF RORY F. EGAN, ACTING CHAIRMAN, AND BOARD MEMBER E. BOYER: January 26, 1976

1. This is an application for certification in which the Board directed the holding of a representation vote.

2. The applicant objected to the inclusion in the voters' list of two persons, namely, Brian Crispe on the grounds that he was reclassified and is considered to be a foreman by his fellow employees, and Nick Frankiw on the grounds that he was a security guard.

3. The representation vote was held on October 7, 1975, and the ballots of Crispe and Frankiw were segregated and the ballot box was sealed.

4. The applicant withdrew its objection insofar as Nick Frankiw was concerned and an inquiry was conducted by a Labour Relations Officer into the duties and responsibilities of Brian Crispe.

5. The evidence in the Report shows that Crispe started to work in October 1973 as a maintenance mechanic. The company caused a notice to be posted on the bulletin board announcing that as of September 22, 1975, Brian Crispe would take over the duties of electrical and mechanical maintenance. The announcement also stated "Your generous support to Brian in his new activity will be much appreciated, and with it goes our good wishes". The announcement appeared over the name of L. E. Souchotte, Plant Engineer, who is the immediate supervisor of Crispe. It is significant that copies of the announcement were sent to L. Bolmstrand, Vice-President of the company, and to L. Rassinger, the Plant Manager. Copies were also sent to all supervisors. The notice is not precise with respect to the title and duties involved in the take-over but Crispe stated in his evidence that he took over the position of Mr. Minari, who had been the maintenance foreman.

6. It was the contention of the respondent company that the evidence indicated that Crispe had to be a lead-hand and not a foreman and that he did not exercise managerial functions.

7. When Crispe was first asked during the course of his examination what his classification was, he replied that he was a maintenance mechanic, millwright, a lead-hand on the maintenance. He also stated, however, that Minari had been the maintenance foreman and, as already noted, he took Minari's position when the latter left. He stated that he was taking over the duties of Minari. Later on in his examination, Crispe said that he was acting foreman – that he had not been given the job as foreman but that he hoped to be a future foreman. He said that he was on a probationary basis. When asked what made him think he was a probationary foreman, his reply was, "Mr. Souchotte. I was talking to him, as I am a lead-hand on maintenance and looking after it. If I measure up to their standards, then maybe I will stay as a foreman." He follows this by saying that he doesn't really think he is a foreman and then again in reply to a further question, he indicates that he presently does consider himself to be a foreman.

8. It is a fact that during the course of his examination by the respondent Crispe stated that while other foremen reprimand, evaluate, hire and fire, he did not. He was asked if the difference between him and Minari was that the latter had the right to hire and fire and discipline while he, Crispe, did not yet have those powers, and his answer was in the affirmative. It should be noted that the examination of Crispe took place on November 13, 1975, which is only about eight weeks after the posting of the announcement referred to earlier. On the other hand, in an earlier part of his testimony, Crispe was asked if anyone had told him he had the power to hire, fire or recommend. His answer to that question was that nobody had told him anything. In view of that answer, together with the fact that only eight weeks had elapsed since the posting of the announcement, very little, if any, weight can be given to the replies solicited from Crispe during his examination by the respondent with respect to his powers.

9. There is evidence that Crispe assigned work to employees and oversaw what they did. It is true that later in his examination he agreed that he was "relaying" orders from the engineer. Nevertheless, Crispe does assign certain jobs to certain people, makes sure the

work gets done and checks and inspects the work. He has attended numerous management production meetings where decisions were made with respect to maintenance matters affecting production. His evidence was that no other "lead-hands" attended such meetings. He also testified that he had been consulted with respect to the selection of persons for retention and lay-off.

10. There was no direct evidence offered by any of Crispe's supervisors including the engineering manager, who issued the announcement referred to above indicating any limitations on Crispe's "take-over" of the duties of mechanical and electrical maintenance. The closest the evidence comes to revealing the intent of management is Crispe's report of the conversation with Souchotte, which is referred to earlier in this decision.

11. It is clear from all the evidence that, at the very least, Crispe is an acting or probationary foreman, perhaps without full powers, although there is a reasonable doubt on this latter point in view of the contents and the distribution of the announcement. In any event, Crispe's situation is plainly such that he cannot be said to share a community of interest with the employees who are in the bargaining unit. In view of his status and the obvious conflict of interest created by the announcement, a unit including Crispe would be inappropriate for collective bargaining. The Board accordingly finds that the ballot cast by Crispe is not to be counted and is to be destroyed.

12. The Board directs that all other ballots cast in the representation vote are to be counted.

13. By letter dated October 8, 1975, that is, the day following the vote, the applicant asked the Board to certify the union pursuant to the provisions of section 7a of the Act. The applicant subsequently asked that if relief was not forthcoming under section 7a that a new vote be directed. In support of its request, the applicant made the following submissions:

- "1) On or about October 1, 1975, a letter (copy enclosed) was sent by registered mail to all employees urging them to vote *no* in the upcoming representation vote. This was signed by Mr. L. J. Bolmstrand, Vice-President of the company.
- 2) On October 7, 1975 during the taking of the representation vote, Mr. L. J. Bolmstrand acted as the company's scrutineer."

14. A hearing was conducted by the Board in which the parties gave evidence and submitted argument on the issues raised by the applicant.

15. The letter referred to in the first item of the applicant's complaint was in the following terms:

"As you can see from our notice board, Tuesday, October 7th is a most important day, both for you the employees of Daymond and for the Company.

It is extremely important that you cast a ballot on October 7th, because the result will be based upon the number of employees who vote. For

the union to be successful more than fifty percent (50%) of the ballots cast must be in favour of the union.

Some of you may have already signed a union card and paid a membership fee. *This does not mean that you must vote for the union.*

The vote on October 7th will be conducted by the Ministry of Labour and is designed to ensure that **NO ONE WILL EVER KNOW HOW YOU VOTE.**

Some of you have been with this company for many years, others for shorter periods. During this time we have been able to fulfil our requirements, resolve our differences and institute progressive advances by working together with you as individuals. The outcome of this vote could change our present relationship, no longer could we communicate on an individual basis. With a union at Daymond, a shop steward or someone else would speak on your behalf. When the time for voting comes we urge you to exercise your rights.

VOTE ON ELECTION DAY.

VOTE NO."

16. In *United Textile Workers of America and Playtex Ltd.*, [1972] OLRB M.R. December 1027, the Board dealt with a letter written in terms very similar to those contained in the letter with which we are here concerned. There was in the *Playtex* letter an exhortation to "VOTE – NO", together with a reference to a change in the relationship between the employees and the respondent in the event that the union should be successful. Paragraphs 4 and 5 of that decision read as follows:

"4. Section 56 of The Labour Relations Act recognizes that an employer has freedom to express his views 'so long as he does not use coercion, intimidation, threats, promises or undue influence'. In this case, the employer did not say anything in the letters addressed to the employees which could properly be characterized as coercion, intimidation, threat or promise. In addition, we are of the view that the statement that the relationship between the respondent and its employees would change in that the employees would no longer be able to deal with the employer on an individual basis and that the union would speak on behalf of the employees is substantially correct in so far as it refers to labour relations matters. A trade union, once certified, becomes the sole collective bargaining agent for all the employees in the bargaining unit and is entitled to represent the employees in their employment relationship with their employer. Accordingly, it cannot be said that the statement referred to above constituted undue influence.

5. Apart from any electioneering or propaganda published by an employer, it is to be assumed that employees recognize that the employer is not usually in favour of having to deal with the employees through a trade union. Accordingly, it ought not be a surprise to the employees

when the employer indicates that he would like to have the employees vote against the trade union. An invitation to employees to vote against the trade union delivered in writing in the absence of any surrounding facts or circumstances which would cause the employees to place undue emphasis on such statement cannot be characterized as undue influence within the meaning of section 56 of the Act. Indeed, employees might consider the fact that the employer is opposed to dealing with them through a trade union as evidence of the fact that union representation would work to the detriment of the employer and to the advantage of the employees. The mere expression of the employer's opinion in such matter, standing alone, is protected by the provisions of section 56 of the Act. The only prohibition on the employer when expressing his views is that such expression of views do not constitute or are not coupled with coercion, intimidation, threats, promises or undue influence."

17. The Board finds the reasoning and conclusions reached in the *Playtex* case applicable in the present situation, and the submission of the applicant in that regard is therefore dismissed.

18. Insofar as the presence of Bolmstrand is concerned, the Board finds that full weight must be accorded to the Certification of the Conduct of Election signed by the scrutineers for the Parties following the vote. The certification reads as follows:

"We, the undersigned, acted as scrutineers for the Parties herein in the conduct of the balloting at the time and place above mentioned. We certify that the balloting was fairly conducted and that all eligible voters were given an opportunity to cast their ballots in secret, and that the ballot box was protected in the interest of a fair and secret vote."

19. In the result, the Board denies the request of the applicant for certification pursuant to section 7a, together with its alternative request for the holding of a new vote.

20. The matter is referred to the Registrar.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.:

I am in agreement with the majority decision except insofar as it applies to the exclusion of Brian Crispe from the bargaining unit.

Having regard to the report of the Labour Relations Officer, and the representations of Counsel, I would find that the duties and responsibilities *actually* exercised by Brian Crispe are not such as to exclude him from the bargaining unit within the provisions of section 1(3)(b) of The Labour Relations Act nor are such duties and responsibilities such that he should be excluded from the bargaining unit on the basis of a lack of community of interest with the unit found to be appropriate.

0756-75-R Warehousemen and Miscellaneous Drivers Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, (Applicant) v. **Provincial Fruit Company (Ottawa) Limited**, (Respondent).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members F. W. Murray and H. Simon.

DECISION OF F. W. MURRAY, January 29, 1976

1. I dissent.

2. I would have found that the transaction that occurred between G. M. Smith Produce Company and the Respondent, Provincial Fruit Co. (Ottawa) Limited should not be characterized as the sale of a business within the meaning of Section 55 of the Labour Relations Act.

3. In reviewing the evidence which I consider to be important, it is quite clear that the Respondent intended to enter into the business of distributing fruits and fresh produce imported from out of the province in the metropolitan Toronto market and in order to do so it was necessary to have floor space at the Ontario Food Terminal.

4. The evidence also disclosed that the most important part of the transaction was the assignment of the lease for the space occupied by Smith at that marketplace.

5. The Respondent argued that Smith was in the distribution of fruit and fresh produce that had originated within the province of Ontario and that their main business was the buying and selling on the Toronto market of this merchandise and the Respondent claims that this was quite a different business than that previously carried on in Ottawa by the Respondent and intended to be carried on in the Toronto market, namely the sale of fruit and fresh produce originating from outside of Ontario, and particularly from the United States, including citrus fruits and other produce coming on the market at quite different times than that domestically grown.

6. It is often very difficult to establish what really constitutes a change in the nature or character of a business. One might be hard pressed to agree with the Respondent's argument that the fact that one business was that concerning the distribution of fruit and produce imported into Ontario, as opposed to produce originating within the province itself, to find that the business had changed its character so that it is substantially different than the business of the predecessor employer.

7. However, in this case before the transaction was closed on June 16, 1975, all of the business of Smith and including its suppliers had transferred their custom to Lenson Celery Ltd., another fruit dealer with space at the Ontario Food Terminal. Not only had the suppliers and customers left Smith for Lenson, all of the management expertise and most of the warehouse employees had also left Smith and gone to work for Lenson Celery. Indeed, the former manager of Smith was instrumental in making these arrangements. Despite this transfer of the ongoing business, the transaction was closed June 16, 1975, without in any way altering the money transaction.

8. Therefore, despite what might appear to be very similar businesses, namely, the distribution of fruit and produce imported into Ontario as opposed to the distribution of fruit and produce originating in Ontario, I would conclude that because

- (1) the Respondent did not attempt, nor did they acquire any management expertise in the acquisition and distribution of domestically grown merchandise, and
- (2) any list of customers or suppliers of such merchandise,

that there must in effect be a substantial difference in the character of these businesses and accordingly the bargaining rights of the Applicant should be terminated in accordance with section 55, sub-section 5.

9. Moreover, without drawing any conclusion with respect to any change in the character of the business, I would have found on the above facts that there was not a transfer of business, but instead the Respondent only acquired by the transaction space at the Ontario Food Terminal, necessary by law to establish and operate the business of the distribution of imported fruit and fresh produce in the Toronto market.

10. Accordingly, I would have dismissed the application.

editors note: The decision of the majority may be found at (1975) OLRB Rep. 830 (Nov.).

CASE LISTINGS JANUARY 1976

	Page
1. Applications for Certification	
(a) Bargaining Agents Certified	369
(b) Applications Dismissed	378
(c) Applications Withdrawn	381
2. Applications for Declaration Terminating Bargaining Rights	382
3. Applications for Declaration that Strike Unlawful	384
4. Applications for Consent to Prosecute	384
5. Complaints under Section 79 (Unfair Labour Practice)	385
6. Application for Consent to Early Termination of Collective Agreement	386
7. Application under Section 55	386
8. Applications for Determination under Section 95(2)	386
9. Applications under Section 112a	387
10. Applications for Reconsideration of Board's Decision	388

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING JANUARY 1976

Applications for Certification

BARGAINING AGENTS CERTIFIED DURING JANUARY

No Vote Conducted

6253-74-R: Architectural Glass & Metal Contractors Association (Applicant) v. International Brotherhood of Painters and Allied Trades, Glaziers' Local Union 1819 (Respondent).

Unit: "all employers of employees engaged in the glass, glazing and metal work installations for whom the respondent has bargaining rights in Metropolitan Toronto, the Counties of York and Peel, the Township of Esquesing, the Towns of Oakville and Milton in the County of Halton, and the Township of Pickering in the County of Ontario, in the residential and in the industrial, commercial and institutional sectors of the construction industry." (no employees in the unit).

0701-75-R: Electrical Contractors Association, Quinte-St. Lawrence (Applicant) v. The International Brotherhood of Electrical Workers, Local Union 115 (Respondent).

Unit: "all employers of journeymen electricians and apprentices for whom the respondent has bargaining rights in the counties of Prince Edward, Hastings, Lennox and Addington, Frontenac, the united counties of Leeds and Grenville and the united counties of Stormont, Dundas and Glengarry in the industrial, commercial and institutional section, the residential sector; the sewers and water-mains sector; the roads sector; the heavy engineering sector and the pipeline sector of the construction industry." (no employees in the unit).

0837-75-R: Tobacco Workers International Union Local 325 (Applicant) v. Benson and Hedges Tobacco Company a Division of Benson & Hedges (Canada) Limited (Respondent).

Unit: "all employees of the respondent in Brampton, save and except supervisors, foremen, persons above the rank of supervisor or foreman, security guards, professional engineers, student engineer, personnel assistant, executive secretary, personnel secretary, advertising and sales staff and persons covered by an existing collective agreement between the applicant and the respondent." (13 employees in the unit). (*Having regard to the foregoing*).

1048-75-R: Canadian Union of Public Employees (Applicant) v. Fort Erie Public Library Board (Respondent).

Unit: "all employees of the respondent save and except the Deputy Chief Librarian, persons above the rank of Deputy Chief Librarian and persons regularly employed for not more than 24 hours per week." (8 employees in the unit).

1080-75-R: Hotel and Restaurant Employees and Bartenders International Union, Restaurant, Cafeteria and Tavern Employees Union Local 254 (Applicant) v. Jack Rice Caterers Limited (Respondent).

Unit: "all employees of the respondent employed at the Nanticoke Generating Station of the Ontario Hydro Electric Power Corporation in the Township of Walpole, save and except supervisors and those above the rank of supervisor." (4 employees in the unit).

1086-75-R: The Canadian Brotherhood of Railway, Transport & General Workers (Applicant) v. Charterways Co. Limited (Respondent).

Unit #1: "all transit drivers, mechanics and mechanics helpers employed by the respondent at St. Thomas, Ontario, save and except foremen persons above the rank of foreman, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (8 employees in the unit). (*Having regard to the agreement of the parties*).

(*Bargaining Unit #2 – See Application Certified Subsequent to Post-Hearing Vote*).

1168-75-R: Algoma University College Faculty Association (Applicant) v. Board of Governors of Algoma University College (Respondent).

Unit: "all full-time academic staff including professional librarians employed by the respondent in the City of Sault Ste. Marie, District of Algoma, Province of Ontario, save and except the principal, members of the Board of Governors and business manager." (36 employees in the unit).

1229-75-R: United Brotherhood of Carpenters & Joiners of America (Applicant) v. Lake of the Woods Development Corporation Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all carpenters, carpenters apprentices and construction labourers in the employ of the respondent in the District of Kenora, including the Patricia Portion save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

1241-75-R: Meyers Transport Drivers Organization (Applicant) v. Meyers Transport Limited (Respondent) v. Teamsters Union Local 938 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Intervener).

Unit: "all employees of the respondent working in and out of Campbellford, save and except dispatchers, persons above the rank of dispatcher, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (10 employees in the unit).

1288-75-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Environmental Technical Services Inc. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the District of Thunder Bay, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

1305-75-R: Hotel, Motel, Restaurant Employees' and Beverage Dispensers' Union Local 757 (Applicant) v. Crossroads Motor Inn Ltd. (Respondent).

Unit: "all employees of the Crossroads Motor Inn Ltd., in Thunder Bay, Ontario, save and except supervisors, persons above the rank of supervisor, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (5 employees in the unit).

1332-75-R: Toronto Typographical Union No. 91 (Applicant) v. CCH Canadian Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Metropolitan Toronto engaged in composing room work, including typesetters, compositors, stonemen and proofreaders, save and except non-working foremen and persons above the rank of non-working foreman." (37 employees in the unit).

1336-75-R: Ontario Nurses' Association (Applicant) v. Medical Centre Hospital, Limited (Respondent).

Unit: "all registered and graduate nurses employed by the respondent in a nursing capacity at Virgil, Ontario." (10 employees in the unit). (Having regard to the representations of the applicant).

1373-75-R: Upholsterers' International Union of North America, AFL-CIO (Applicant) v. Plydesigns (Respondent).

Unit: "all employees of the respondent at Orono, Ontario, save and except foremen, persons above the rank of foreman and office and sales staff." (45 employees in the unit).

1407-75-R: The Hotel and Club Employees Union, Local 299 of the Hotel and Restaurant Employees and Bartenders International Union, (AFL-CIO-CLC) (Applicant) v. The Prince Hotel Toronto (Respondent).

Unit: "all employees of the respondent at the Prince Hotel in the Borough of North York, save and except supervisors, persons above the rank of supervisor, office, sales and accounting staff, front desk staff, management trainees and employees at the Katsura restaurant." (181 employees in the unit). (*Having regard to the agreement of the parties*).

1410-75-R: The International Brotherhood of Electrical Workers Local 586 – Ottawa (Applicant) v. Square D Company Canada Limited, Arnprior (Respondent).

Unit: "all employees of the respondent in the town of Arnprior, save and except foremen and those above the rank of foreman, quality control and laboratory technicians, office and sales staff and students employed during the school vacation period." (80 employees in the unit).

1418-75-R: The Indalloy Employees Association (Applicant) v. Indalloy – Division of Indal Limited (Respondent).

Unit: "all employees of Indal Limited, carrying on business as Indalloy in Metropolitan Toronto, save and except foremen and those above the rank of foreman, office and sales staff." (12 employees in the unit).

1421-75-R: Retail Clerks Union, Local 486 (Applicant) v. Kingston Vending Limited (Respondent).

Unit: "all employees of the respondent at Kingston, save and except supervisors, persons above the rank of supervisor, the secretary to the general manager and students employed during the school vacation period." (24 employees in the unit). (*Having regard to the representations of the parties*).

1426-75-R: Canadian Union of Public Employees (Applicant) v. Oshawa General Hospital (Respondent).

Unit: "all employees of the respondent at Oshawa regularly employed for not more than 24 hours per week, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, technical personnel, supervisors and foremen, persons above the rank of supervisor and foreman, persons covered

by subsisting collective agreements between the respondent and the International Union of Operating Engineers and the respondent and CUPE Local 45." (163 employees in the unit). (*Having regard to the agreement of the parties*).

1427-75-R: London and District Service Workers' Union, Local 220, S.E. I.U., A.F. of L., C.I.O., C.L.C. (Applicant) v. The Listowel Memorial Hospital (Respondent).

Unit: "all employees of the respondent regularly employed for not more than 24 hours per week save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, technical personnel, supervisors, persons above the rank of supervisor, office and clerical staff and those employees covered by a subsisting collective agreement between the respondent and the Ontario Nurses Association, Local 119." (36 employees in the unit). (*Having regard to the agreement of the parties*). (*For the purpose of clarity, the Board declared that the term technical personnel comprises physiotherapists, occupational therapists, psychologists, Electro-encephalographists, electrical shock therapists, laboratory, radiological, pathological and cardiological technicians.*)

1451-75-R: Canadian Union of Public Employees (Applicant) v. Memorial Hospital (Respondent).

Unit: "all employees of the respondent regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except professional medical staff, graduate nursing staff, under graduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, technical personnel, supervisors or foreman, chief engineer, office staff, and those covered by existing collective agreement." (40 employees in the unit). (*Having regard to the agreement of the parties*).

1456-75-R: Bakery & Confectionery Workers' International Union of America, Local 322 (Applicant) v. Morrison Lamothe Foods Limited (Respondent).

Unit: "all employees of Bakery Division including specialty Bakery of the respondent at Ottawa, Ontario, save and except foremen, foreladies and those above the rank of foreman or forelady; office and clerical staff including production control and quality control; sales department personnel, which includes driver salesmen, garage staff and transport drivers; retail store and returned goods employees; cafeteria staff; employees working not more than 24 hours per week; security personnel; all employees of the commissary and restaurant departments; and students employed for school vacation periods." (159 employees in the unit). (*Having regard to the agreement of the parties*).

1460-75-R: Labourers International Union of North America Local 183 (Applicant) v. Inaugural Investments Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario employed on residential construction, save and except construction labourers employed as helpers of bricklayers and plasterers, non-working foremen and persons above the rank of non-working foreman." (8 employees in the unit).

1464-75-R: Canadian Union of Public Employees (Applicant) v. Biwest Contracting Limited (Respondent).

Unit: "all employees of the respondent employed in its garbage collection operation in Cornwall, Ontario, save and except foremen, persons above the rank of foreman, persons regularly employed

for not more than twenty-four hours per week, and students employed during the school vacation period.” (10 employees in the unit). (*Having regard to the agreement of the parties*).

1467-75-R: Christian Labour Association of Canada (Applicant) v. Nadeco Limited (Respondent).

Unit: “all construction labourers in the employ of the respondent in the Regional Municipality of Niagara and the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman.” (2 employees in the unit). (*Having regard to the foregoing*).

1478-75-R: International Union of Operating Engineers, Local 793 (Applicant) v. Nadrofsky Steel Erecting Limited (Respondent).

Unit: “all employees of the respondent working at or out of Brantford, save and except foremen, persons above the rank of foreman, office and sales staff, and persons covered by a subsisting collective agreement between the Crane Rental Association of Ontario and the applicant.” (8 employees in the unit). (*Having regard to the agreement of the parties*).

1484-75-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Art Busse Limited (Respondent).

Unit: “all carpenters and carpenters’ apprentices in the employ of the respondent in the District of Kenora, including the Patricia Portion, save and except non-working foremen and persons above the rank of non-working foreman.” (4 employees in the unit).

1485-75-R: The Carpenters’ District Council of Toronto and vicinity on behalf of Local 27, 666, 681, 1133, 1963, 3227 and 3233, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Rank Construction Ltd. (A company within the Rank Organization) (Respondent).

Unit: “all carpenters and carpenters’ apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman.” (4 employees in the unit).

1486-75-R: International Union, United Plant Guard Workers of America, Local 1962 (Applicant) v. The Steel Company of Canada, Limited – Burlington Works (Respondent).

Unit: “all security guards employed by the respondent at its Burlington Works, 1250 Appleby Line in the City of Burlington, save and except supervisors, persons above the rank of supervisor and students employed during the school vacation period.” (3 employees in the unit).

1491-75-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Work Wear Corporation of Canada Ltd. (Respondent).

Unit: “all driver salesmen of the respondent working at and out of Sault Ste. Marie, save and except supervisors and persons above the rank of supervisor, persons regularly employed for not more than twenty-four hours per week and students employed for the school vacation period.” (5 employees in the unit). (*Having regard to the agreement of the parties*).

1492-75-R: Retail, Wholesale and Department Store Union AFL:CIO:CLC (Applicant) v. Work Wear Corporation of Canada Ltd. (Respondent).

Unit: "all office and clerical employees of the Respondent at Sault Ste. Marie, Ontario save and except the Office Supervisor and persons above the rank of Office Supervisor, secretary to the Branch Manager, sales staff, persons regularly employed for not more than twenty-four hours per week, and students employed for the school vacation period." (3 employees in the unit). (*Having regard to the agreement of the parties*).

1493-75-R: Local Union 1964, International Brotherhood of Electrical Workers (Applicant) v. Peterborough Utilities Commission (Respondent).

Unit: "all office, clerical and technical employees of the Peterborough Utilities Commission, save and except supervisors and those above the rank of supervisor, secretary to the General Manager, persons regularly employed for not more than twenty-four hours per week and students employed for the school vacation periods and employees covered by the subsisting collective agreement between the Peterborough Utilities Commission and the I.B.E.W. Local 1964." (25 employees in the unit). (*Having regard to the agreement of the parties*).

1502-75-R: Christian Labour Association of Canada (Applicant) v. Tecumseth Insulation Services Ltd. (Respondent).

Unit: "all insulation mechanics and insulation mechanics' apprentices in the employ of the respondent in the County of Simcoe, the District Municipality of Muskoka and the Township of Thorah and all land north thereof in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit). (*Having regard to the foregoing*).

1503-75-R: Lumber and Sawmill Workers Union, Local 2693, of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Castlegreen Co-operative (Respondent).

Unit: "all construction labourers in the employ of the respondent in the District of Thunder Bay, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit). (*Having regard to the foregoing*).

1528-75-R: Teamsters Union Local 938 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant v. Trend Truck Centre (Oshawa) Ltd. Carrying on business as Oshawa Truck Centre (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Oshawa, Ontario save and except foremen, those above the rank of foreman, office and sales staff and students employed during the school vacation period." (16 employees in the unit). (*Having regard to the agreement of the parties*).

1534-75-R: United Brotherhood of Carpenters and Joiners of America Local 38 (Applicant) v. Cooper Construction Company Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Regional Municipality of Niagara and the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

1538-75-R: Ontario Nurses' Association (Applicant) v. Clinton Public Hospital (Respondent).

Unit: "all registered and graduate nurses employed in a nursing capacity by Clinton Public Hospital, Clinton, Ontario, save and except head nurses and those employed above the rank of head nurse and persons regularly employed for not more than twenty-four hours per week." (10 employees in the unit).

1565-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. Crestwood Construction Inc. (Respondent).

Unit: "all employees of the respondent engaged in concrete forming on residential building projects in Metropolitan Toronto, the Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

Applications Certified Subsequent to Pre-Hearing Vote

7390-74-R: Canadian Workers Union (Applicant) v. Canron Ltd. Eastern Structural Division (Respondent) v. Shopmen's Local Union No. 743 of the International Association of Bridge, Structural and Ornamental Iron Workers (Intervener).

Unit: "all employees of the Respondent engaged in the fabrication of iron, steel and metal products, including maintenance work, in connection therewith at the Respondent's shop located at the Respondent's premises in Metropolitan Toronto, save and except office, clerical and sales employees, watchmen guards, foremen and persons above the rank of foreman, students employed during the school vacation period, employees engaged in erection, installation or construction work and persons covered under subsisting collective agreements between the Ontario Erectors Association and the International Association of Bridge, Structural and Ornamental Ironworkers, Local Unions 700, 721, 736, 765 and 786; Canron Limited, Eastern Structural Division and The Draftsmen Association of Ontario, Local 164, Federation of Professional and Technical Engineers (A.F.L.-C.I.O.); and The Ontario Erectors Association and International Union Operating Engineers, Hoisting Division, Local 793." (335 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on revised voters' list	330
Number of persons who cast ballots	315
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	206
Number of ballots marked in favour of intervener	108

1205-75-R: Graphic Arts International Union, London Local 517 (Applicant) v. Commercial Printing Company (Respondent) v. Windsor Printing Pressmen and Assistants' Union, Local 274 (Intervener #1) v. Windsor Typographical Union, No. 533 (Intervener #2).

Unit #1: "all printing pressmen and pressmen apprentices employed by Commercial Printing Company, in the City of Windsor, Ontario, save and except non-working foremen, persons above the rank of non-working foreman." (2 employees in the unit).

Number of names of persons on revised voters' list	2
Number of persons who cast ballots	2
Number of ballots marked in favour of applicant	2
Number of ballots marked in favour of intervener #2	0

Unit #2: "all compositors employed by Commercial Printing Company, in the City of Windsor, Ontario, save and except non-working foremen, persons above the rank of non-working foreman." (1 employee in the unit).

Number of names of persons on revised voters' list	1
Number of persons who cast ballots	1
Number of ballots marked in favour of applicant	1
Number of ballots marked in favour of Intervener #2	0

1206-75-R: Graphic Arts International Union, London Local 517 (Applicant) v. Curtis Company Limited (Respondent) v. Windsor Printing Pressmen and Assistants' Union, Local 274 (Intervener #1) v. Windsor Typographical Union, No. 533 (Intervener #2).

Unit #1: "all printing pressmen and pressmen apprentices employed by Curtis Company Limited, in the City of Windsor, Ontario, save and except non-working foremen, persons above the rank of non-working foreman." (5 employees in the unit).

Number of names of persons on revised voters' list		5
Number of persons who cast ballots	4	
Number of ballots marked in favour of applicant	4	
Number of ballots marked in favour of Intervener #1	0	

Unit #2: "all compositors employed by Curtis Company Limited, in the City of Windsor, Ontario, save and except non-working foremen, persons above the rank of non-working foreman." (3 employees in the unit).

Number of names of persons on received voters' list		3
Number of persons who cast ballots	2	
Number of ballots marked in favour of applicant	2	
Number of ballots marked in favour of Intervener #2	0	

1339-75-R: Canadian Union of Public Employees (Applicant) v. Sister Edouard-de-Marie, Executive Director Hawkesbury & District General Hospital (Respondent) v. Syndicate National des Employées de l'Hopital General de Hawkesbury et de la Region (Intervener).

Unit: "tous les salaries de l'hospital General de Hawkesbury et de la Region a l'exception du personnel medical, des infirmieres licenciées, des etudiantes infirmieres, des pharmaciens gradues, des etudiants pharmaciens, des dieteticiens gradues, des etudiants dieteticiens, du personnel technique, des contremaitres, et contremaitresses, des personnes d'un rang equivalent ou superieur, du chef ingenieur et des employes de bureau." (73 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on list as originally prepared by employer		74
Number of persons who cast ballots	61	
Number of ballots marked in favour of applicant	59	
Number of ballots marked in favour of intervener	2	

1424-75-R: Canadian Chemical Workers Union (Applicant) v. Scholl (Canada) Incorporated (Respondent) v. Local 897, International Chemical Workers' Union (Intervener).

Unit: "all employees of the respondent at its plant at 174 Bartley Dr., in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, and students employed during the school vacation Period." (54 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on revised voters' list		55
Number of persons who cast ballots	49	
Number of ballots marked in favour of applicant	49	
Number of ballots marked in favour of intervener	0	

1425-75-R: Canadian Chemical Workers Union (Applicant) v. Engelhard Industries of Canada Ltd. (Respondent) v. Local 424, International Chemical Workers' Union (Intervener).

Unit: "all employees of the Respondent in its refinery and assay laboratory in Toronto, save and except the chief assayer, chief chemist, persons above these ranks, office staff and security guards." (18 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on revised voters's list		16
Number of persons who cast ballots	14	
Number of ballots marked in favour of applicant	12	
Number of ballots marked in favour of intervener	2	

1459-75-R: Graphic Arts International Union, London Local 517 (Applicant) v. Devon Graphics (Respondent) v. Windsor Printing Pressmen & Assistants Union, Local No. 274 (Intervener).

Unit: "all employees employed by Devon Graphics in the City of Windsor, Ontario, save and except non-working foremen, persons above the rank of non-working foreman, office staff and employees covered by collective agreements with Graphic Arts International Union, Local 517 and Local 133B." (5 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on list as originally prepared by employer		5
Number of persons who cast ballots	5	
Number of ballots marked in favour of applicant	5	
Number of ballots marked in favour of intervener	0	

Applications Certified Subsequent to Post-Hearing Vote

0863-75-R: Canadian Union of Public Employees (Applicant) v. Regional Municipality of York (Respondent) v. Group of Employees (Objectors).

Unit: "all office, clerical and technical employees of the respondent in the Regional Municipality of York, save and except section heads, persons above the rank of section head, professional engineers, secretaries to department heads, the chief administrative officer, the treasurer, regional clerk, regional solicitor and personnel co-ordinator, students employed during the school vacation period and persons covered by subsisting collective agreements." (265 employees in the unit). (...For purposes of clarity the Board notes that "department heads" referred to in the exclusionary clause refers to secretaries to the commissioner of engineering, the commissioner of planning and the commissioner of health and social services.).

Number of names of persons on revised voters' list		205
Number of persons who cast ballots	175	
Ballots segregated and not counted	3	
Number of ballots marked in favour of applicant	117	
Number of ballots marked against applicant	55	

1011-75-R: The Civil Service Association of Ontario, Inc. (Applicant) v. Sudbury Memorial Hospital (Respondent).

Unit: "all office, clerical and technical employees of the respondent at Sudbury, Ontario, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, supervisors and foremen, persons above the rank of supervisor and foreman, secretary to assistant administrator, secretary to the director of nursing, secretary to assistant director of nursing, payroll officer, students employed during the school vacation period, persons regularly employed for not more than 24 hours per week and persons covered by subsisting collective agreement." (82 employees in the unit).

Number of names of persons on voters' list		69
Number of persons who cast ballots		60
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	50	
Number of ballots marked against applicant	9	

1086-75-R: The Canadian Brotherhood of Railway, Transport & General Workers (Applicant) v. Charterways Co. Limited (Respondent).

Unit #2: "all transit drivers, mechanics and mechanics helpers employed by the respondent at St. Thomas, Ontario, save and except foremen, persons above the rank of foreman, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (2 employees in the unit).

Number of names of persons on voters' list		5
Number of persons who cast ballots		5
Number of ballots marked in favour of applicant	3	
Number of ballots marked against applicant	2	

(Bargaining Unit #1 – See Bargaining Units Certified – No Vote Conducted).

1234-75-R: Ontario Nurses' Association (Applicant) v. Laurentian Hospital, Sudbury (Respondent).

Unit: "all registered and graduate nurses employed in a nursing capacity by Laurentian Hospital, Sudbury save and except Infection Control Nurses, Head Nurses, Persons above the rank of Head Nurses and Full time Nurses." (63 employees in the unit).

Number of names of persons on voters list		47
Number of persons who cast ballots		11
Number of ballots marked in favour of applicant	11	
Number of ballots marked against applicant	0	

APPLICATIONS FOR CERTIFICATION DISMISSED DURING JANUARY

No Vote Conducted

7357-74-R: Diamond "Z" Association (Applicant) v. Zehr's Markets Limited (Respondent) v. Retail Clerks International Association (Intervener #1) v. Retail Clerks International Association, Local 206 (Intervener #2). (7 employees).

0984-75-R: Christian Trade Unions of Canada (Local 6) (Applicant) v. Orriss Electric Limited (Respondent) v. Local Union 105, International Brotherhood of Electrical Workers (Intervener). (21 employees).

1061-75-R: London and District Service Workers' Union, local 220, S.E.I.U., of L., C.I.O., C.L.C. (Applicant) v. The Norfolk Hospital Nursing Home (Respondent). (36 employees).

1243-75-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Hotel Frontenac Sudbury Limited (Respondent).

Unit: “all employees of the respondent at Sudbury regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except foremen and bar managers, persons above the rank of foreman and bar manager and persons covered by a subsisting collective agreement.” (5 employees in the unit).

1244-75-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Coulson Hotel Limited (Respondent). (1 employee).

1245-75-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. President Motor Hotel (Respondent).

Unit: “all employees of the respondent at Sudbury, regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except foremen and bar managers, persons above the rank of foreman and bar manager and persons covered by a subsisting collective agreement.” (23 employees in the unit).

1246-75-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Ledo Hotel Limited (Respondent).

Unit: “all employees of the respondent at Sudbury regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except foremen and bar managers, persons above the rank of foreman and bar manager and persons covered by a subsisting collective agreement.” (6 employees in the unit).

1307-75-R: Canadian Union of Public Employees (Applicant) v. The Corporation of the County of Lambton (Respondent). (140 employees).

1399-75-R: Canadian Chemical Workers Union (Applicant) v. Maple Leaf Mills Limited (Prescott Plant) (Respondent). (28 employees).

1422-75-R: Operative Plasterers and Cement Masons International Association of the United States and Canada Local Union No. 124, Ottawa – Hull (Applicant) v. Bellai Frères Ltée, Brothers Ltd. (Respondent) v. Labourers’ International Union of North America, Local 527 (Intervener). (8 employees).

1437-75-R: Local 1590, International Brotherhood of Electrical Workers (Applicant) v. Bernardin of Canada Limited (Respondent). (60 employees).

1440-75-R: The Canadian Union of Public Employees (Applicant) v. The Belle River Public Utilities (Respondent). (6 employees).

1483-75-R: Local Union 1687 of the International Brotherhood of Electrical Workers (Applicant) v. Elwood R. Little Electrical Limited (Respondent). (no employees).

1544-75-R: Carpenters’ District Council of Toronto and Vicinity on behalf of Locals 27, 666, 681, 1133, 1963, 3227 and 3233 (Applicant) v. Franki Canada Ltd. (Respondent) v. Labourers’ International Union of North America, Local 183 (Intervener). (2 employees).

Certification Dismissed Subsequent to Pre-Hearing Vote

1388-75-R: Amalgamated Clothing Workers of America (Applicant) v. Jarmain Cleaners and Launderers (Respondent).

Voting Constituency: "All employees of the respondent in London, Ontario, save and except foremen, foreladies, persons above the rank of foreman and forelady, supervisors, sales and office staff, salesmen drivers, truck drivers, persons employed for not more than 24 hours per week and students employed during the school vacation period." (46 employees).

Number of names of persons on revised voters' list		38
Number of persons who cast ballots		35
Number of ballots marked in favour of applicant	15	
Number of ballots marked against applicant	20	

Certification Dismissed Subsequent to Post-Hearing Vote

0333-75-R: The International Association of Bridge, Structural and Ornamental Ironworkers, Local 736 (Applicant) v. X D G Limited (Respondent) v. Labourers' International Union of North America, Local 1081 (Intervener).

Unit: "all ironworkers and ironworkers' apprentices in the employ of the respondent in the Regional Municipality of Waterloo except part of Beverly Township annexed by North Dumfries Township, save and except non-working foremen and persons above the rank of non-working foreman." (18 employees in the unit).

Number of names of persons on voters' list		8
Number of persons who cast ballots		8
Number of ballots marked in favour of applicant	3	
Number of ballots marked against applicant	5	

1135-75-R: Teamsters, Chauffeurs, Warehousemen and Helpers Local 880 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. N. Tepperman Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the company at Windsor, Ontario, save and except foremen and supervisors, those above the rank of foreman and supervisor, office and sales staff and students employed for the school vacation period." (47 employees in the unit). (For purposes of clarity, sales clerks at the retail outlet of the respondent are excluded from the bargaining unit whereas shippers at the retail outlet of the respondent are included in the bargaining unit.).

Number of names of persons on voters' list		27
Number of persons who cast ballots		26
Number of ballots marked in favour of applicant	8	
Number of ballots marked against applicant	18	

1236-75-R: Labourers' International Union of North America, Local 1081 (Applicant) v. Brantford Brick Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Brantford save and except truck drivers, foremen, persons above the rank of foreman, office and sales staff and students employed for the school vacation period." (16 employees in the unit).

Number of names of persons on revised voters' list	15
Number of persons who cast ballots	16
Ballots segregated and not counted	1
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	10

1378-75-R: The Canadian Union of Public Employees (Applicant) v. The Canadian Red Cross Society, Blood Transfusion Service Toronto Centre (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent working at or out of Metropolitan Toronto save and except Assistant Supervisors, persons above the rank of Assistant Supervisor, Laboratory Technologists, Duty Clerks, Clerical Staff, persons covered by a certificate of the Board dated July 29, 1975, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (96 employees in the unit).

Number of persons on revised voters' list	95
Number of persons who cast ballots	86
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	39
Number of ballots marked against applicant	46

1397-75-R: Brewery, Soft Drink Distillery, Distributors and Miscellaneous Workers, Local Union 1000, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Pioneer Petroleum (Respondent) v. Group of Employees (Objectors).

Unit: "all truck drivers and truck drivers helpers employed by the respondent and working at or out of Hamilton, save and except full-time dispatcher, persons above the rank of full-time dispatcher, office staff and persons who are regularly employed for not more than twenty-four hours per week." (9 employees in the unit).

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	8
Ballots segregated and not counted	1
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	5

APPLICATIONS FOR CERTIFICATION WITHDRAWN DURING JANUARY

0993-75-R: The United Brotherhood of Carpenters & Joiners of America A.F. of L.C.I.O., C.L.C. (Applicant) v. Rigo Forming Co. (Respondent). (13 employees).

1242-75-R: Warehousemen and Miscellaneous Drivers Local Union No. 419 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Metro Wall Coverings (Respondent). (14 employees).

1273-75-R: Canadian Union of Public Employees (Applicant) v. The Governing Council of the University of Toronto (Respondent) v. Service Employees Union – Local 204 (Intervener). (61 employees).

1461-75-R: Labourers' International Union of North America, Local 527 (Applicant) v. Anthes Equipment Limited (Respondent) v. Group of Employees (Objectors). (10 employees).

1481-75-R: The Association of Allied Health Professionals: Ontario (Applicant) v. The Board of Governors of Riverdale Hospital (Respondent) v. The Canadian Union of Public Employees, Local Union No. 79 (Intervener). (33 employees).

1496-75-R: International Union of Operating Engineers, Local 793 (Applicant) v. Canadian Pittsburgh Industries Limited (Respondent). (4 employees).

1542-75-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Applicant) v. Plested Equipment Ltd. (Respondent). (9 employees).

Applications For Declaration Terminating Bargaining Rights

1542-75-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Applicant) v. Plested Equipment Ltd. (Respondent). (9 employees).

Applications For Declaration Terminating Bargaining Rights Disposed Of During January

0302-75-R: Mike Duguay (Applicant) v. Retail, Wholesale and Department Store Union, Local 579, AFL:CIO:CLC (Respondent) v. A. Silverman & Sons Limited (Intervener). (*Granted*).

Unit: "all employees of the intervener at Sudbury, save and except store manager, assistant managers, supervisors, persons above the rank of store manager, office staff and students employed during the school vacation period." (3 employees in the unit).

Number of names of persons on voters' list		3
Number of persons who cast ballots		2
Number of ballots marked in favour of respondent	1	
Number of ballots marked against respondent	1	

0622-75-R: Ian Arsenault on behalf of a Group of Employees (Applicant) v. Canadian Textile and Chemical Union (Respondent) v. Artistic Woodwork Co. Limited (Intervener). (*Granted*).

Unit: "all employees of Artistic Woodwork Co. Limited, in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period." (119 employees in the unit).

Number of names of persons on revised voters' list		109
Number of persons cast ballots		104
Ballots segregated and not counted	3	
Number of spoil ballots	3	
Number of ballots marked in favour of respondent	36	
Number of ballots marked against respondent	62	

0801-75-R: Neil Booth (Applicant) v. Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers (Respondent) v. MacDonald's Beverages (Intervener). (*Granted*).

Unit: "all employees of MacDonald & Son (Timmins) Ltd. at Timmins (South Porcupine), Ontario, save and except sales supervisors, foremen, persons above the rank of sales supervisor and foreman, and office staff." (5 employees in the unit).

Number of names of persons on revised voters' list		6
Number of persons who cast ballots		6
Number of ballots marked in favour of respondent	1	
Number of ballots marked against respondent	5	

0835-75-R: Bruce MacIntyre (Applicant) v. Teamsters, Chauffeurs, Warehousemen, Helpers, Local Union No. 91, Affiliated with International Brotherhood of Teamsters, Chauffeurs, Warehousemen, Helpers of America (Respondent). (*Granted*).

Unit: "all employees save and except foremen, those above the rank of foreman, office staff, sales staff, security guards and office janitors employed by L. R. MacDonald & Sons Limited at its terminals in the City of Cornwall, County of Stormont." (5 employees in the unit).

Number of names of persons on list as originally prepared by employer		6
Number of persons who cast ballots		3
Number of ballots marked in favour of respondent	0	
Number of ballots marked against respondent	3	

1212-75-R: Wayne Miller, Dennis Coville (Applicants) v. Warehousemen and Miscellaneous Drivers – Local 419 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Respondent) v. H. Sopha & Coville Cartage (Intervener). (*Granted*).

Unit: "all employees of H. Sopha & Coville Cartage at and out of Metropolitan Toronto, save and except foremen, persons above the rank of foreman and office staff." (7 employees in the unit).

Number of names of persons on revised voters' list		6
Number of persons who cast ballots		6
Number of ballots marked in favour of respondent	0	
Number of ballots marked against respondent	6	

1321-75-R: Ilona Felfoldi (Applicant) v. Boot and Shoe Workers' Union, CLC, AFL-CIO (Respondent). (60 employees). (*Terminated*).

1368-75-R: Mary Triebner (Applicant) v. Service Employees Union, Local 210, affiliated with Service Employees International Union, AFL-CIO-CLC (Respondent). (*Granted*).

Unit: "all office and clerical employees of South Huron Hospital Association in Exeter, save and except supervisors and persons above the rank of supervisor." (3 employees in the unit).

Number of names of persons on voters' list		4
Number of persons who cast ballots		4
Number of ballots marked in favour of respondent	0	
Number of ballots marked against respondent	4	

1452-75-R: Mary Lynn Empey, Margaret Hart, Nancy Davie, Helen Donovan, Brenda Jean Stevenson (Applicants) v. Canadian Union of Public Employees (Respondent) v. Corporation of the Town of Smith Falls (Intervener). (5 employees). (*Granted*).

1466-75-R: Neil McBain (Applicant) v. Canadian Union of Public Employees and its Local 16 (Respondent) v. Chester B. Edwards, Susan Jacobs (Employee Intervener). (13 employees). (*Dismissed*).

1505-75-R: William Exell, Henry Gall and Steve Sopko (Applicants) v. The Service Employees International Union, A.F. of L.-C.I.O., C.L.C., Local 268 (Respondent). (3 employees). (*Dismissed*).

1506-75-R: Maurice Gascoigne, Lloyd Hamlin, Reginald Arnberg, George Robertson and William Exell (Applicants) v. International Union of Operating Engineers, Local 865 (Respondent). (140 employees). (*Dismissed*).

Applications For Declaration That Strike Unlawful Disposed Of During January

1281-75-U: Pilkington Brothers (Canada) Limited, Pilkington Glass Manufacturing Division (Applicant) v. United Glass and Ceramic Workers of North America (A.F.L.-C.I.O.-C.L.C.) and its Local 295, and those persons named in Schedule "A" of this application (Respondent). (*Withdrawn*).

1282-75-U: Pilkington Brothers (Canada) Limited, Pilkington Glass Manufacturing Division (Applicant) v. Those persons named in Schedule "A" of this Application (Respondents). (*Direction*).

Applications For Consent To Prosecute Disposed of During January

1235-75-U: Van Horne Construction Limited (Applicant) v. Ed Stewart, Antonio Grisolia, Phillip Robichaud, Walter Cole, The Carpenters' District Council of Toronto and Vicinity representing Locals 27, 68, 1133, 1747, 1963, 3233 and 3227 of the United Brotherhood of Carpenters and Joiners of North America and each of Locals 27, 68, 1133, 1747, 1963, 3227, and 3233 of the United Brotherhood of Carpenters and Joiners of America (Respondent). (*Withdrawn*).

1343-75-U: United Brotherhood of Carpenters and Joiners of America, Local Union 446 (Applicant) v. Alf Bondon (Respondent). (*Withdrawn*).

1470-75-U: Local 6946, United Steelworkers of America (Applicant) v. Stewart Hartshorn Limited (Respondent). (*Withdrawn*).

1480-75-U: United Brotherhood of Carpenters & Joiners of America (Applicant) v. Whity Boat Works Limited (Respondent). (*Withdrawn*).

1487-75-U: Local Union 105 International Brotherhood of Electrical Workers (Applicant) v. Scott Electric (Respondent). (*Dismissed*).

1547-75-U: Local Union 1687 of the International Brotherhood of Electrical Workers (Applicant) v. Elwood R. Little Electrical Limited (Respondent). (*Withdrawn*).

Complaints Under Section 79 (Unfair Labour Practice) Disposed Of During January

7369-74-U: Clifford Renaud, et al (Complainants) v. The United Steelworkers of America, Local 2471, and Hawker Industries Limited, Canadian Bridge Division (Respondents). (*Dismissed*).

1138-75-U: Retail, Wholesale and Department Store Union AFL:CIO:CLC (Complainant) v. Rockland St. Denis I.G.A. (Respondent). (*Terminated*).

1228-75-U: Labourers' International Union of North America, Local 183 (Complainant) v. Greenwin Property Management, Ronald Lester and Colin Short (Respondents). (*Withdrawn*).

1255-75-U: Andrew Warren (Complainant) v. United Electrical, Radio & Machine Workers of America and their Local 543 (Respondent).

- and -

1257-75-U: Helen Warren (Complainant) v. United Electrical, Radio and Machine Workers of America and their Local 543 (Respondent).

- and -

1258-75-U: Danilo N. Cortes (Complainant) v. United Electrical, Radio and Machine Workers of America and their Local 543 (Respondent). (*Dismissed*).

1295-75-U: Alfred James Briggs (Complainant) v. Ottawa Motion Picture Projectionists Union, Local 257 of The International Alliance of Theatrical Stage Employees (Respondent). (*Withdrawn*).

1308-75-U: London Civic Employees' Local Union No. 107, Canadian Union of Public Employees (Complainant) v. The Corporation of the City of London (Respondent). (*Granted*).

1322-75-U: Ramkrishan Sharma (Complainant) v. Local Union 4752, United Steelworkers of America and Burlington Steel, Division of Slater Steel Industries Limited (Respondents). (*Withdrawn*).

1358-75-U: Domenico Gimondo (Complainant) v. Amalgamated Meat Cutters & Butchers -- P-1105, and Galco Food Production (Respondents). (*Dismissed*).

1376-75-U: Teamsters Union Local 879 (Complainant) v. Provincial Sanitation Services (Respondent). (*Withdrawn*).

1409-75-U: Local Union 1687 of the International Brotherhood of Electrical Workers (Complainant) v. Elwood Little Electric Limited (Respondent). (*Withdrawn*).

1419-75-U: Teamsters, Chauffeurs, Warehousemen and Helpers Local 91 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Complainant) v. Hoffman Concrete Products Limited (Respondent). (*Withdrawn*).

1420-75-U: Teamsters, Chauffeurs, Warehousemen and Helpers Local 91 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Complainant) v. Hoffman Concrete Products Limited (Respondent). (*Withdrawn*).

1423-75-U: Ontario Nurses' Association (Complainant) v. The Peterborough Clinic (Respondent). (*Withdrawn*).

1438-75-U: Gunter J. Petrick (Complainant) v. York Condominium Corporation #75 (Respondent). (*Dismissed*).

1439-75-U: United Steelworkers of America (Complainant) v. N. & D. Supermarkets Ltd. (Respondent). (*Withdrawn*).

1454-75-U: United Shoe Workers of America Local 300, AFL-CIO-CLC (Complainant) v. Savage Shoes 1970 Ltd. (Plant No. 7, London, Ontario) (Respondent). (*Withdrawn*).

1501-75-U: Hotel, Motel, Restaurant Employees' and Beverage Dispensers' Union Local 757 (Complainant) v. Crossroads Motor Inn Ltd. (Respondent). (*Withdrawn*).

1527-75-U: Mr. Vladimir Yanevski (Complainant) v. Pilkington Brothers Canada Limited, Pilkington Glass Mfg. Division and United Glass Workers Local 295 (Respondents). (*Withdrawn*).

1541-75-U: Izidor Marinovic and Euton Sinclair (Complainants) v. Smith Electric and International Brotherhood of Electrical Workers (Respondents). (*Withdrawn*).

1550-75-U: Teamsters Union Local 938 (Complainant) v. Oshawa Truck Centre (Respondent). (*Withdrawn*).

Application For Consent To Early Termination Of Collective Agreement

1462-75-M: Oil, Chemical and Atomic Workers International Union (trade union) v. Petrofina Canada Limited (Warehouse of the Toronto T.B.A. Division) (Employer). (*Granted*).

Application Under Section 55 Disposed Of During January

1457-75-R: Lake Ontario District Council, on behalf of Locals 397, 572, 1071, 1450 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Huffman Construction Limited (also carrying on business as H C Five Investments) (Respondent). (*Withdrawn*).

Applications For Determination Under Section 95(2) Disposed Of During January

7580-74-M: The Ottawa Newspaper Guild, Local 205 of The Newspaper Guild (Trade Union) v. The Citizen (a division of Southam Press Limited) (Employer). (*Granted*).

0508-75-M: London and District Building Service Workers' Union, Local 220 (Applicant) v. The Norfolk Hospital Association at Simcoe, Ontario; and Norfolk Hospital Nursing Home (Respondents). (*Terminated*).

1096-75-M: United Steelworkers of America (Applicant) v. Canadian Carborundum Company, Limited (Respondent). (*Withdrawn*).

1414-75-M: Canadian Union of Public Employees and its Local #1776 (Applicant) v. The Brampton Public Library Board (Respondent). (*Withdrawn*).

1571-75-M: Ontario Nurses' Association (Applicant) v. Espanola General Hospital (Respondent). (*Withdrawn*).

Applications Under Section 112a Disposed Of During January

1109-75-M: International Brotherhood of Painters and Allied Trades, Local 1891 (Applicant) v. Speed Drywall Limited (Respondent). (*Withdrawn*).

1265-75-M: International Brotherhood of Painters and Allied Trades, Local 1891 (Applicant) v. York Lathing Limited (Respondent). (*Granted*).

1429-75-M: Labourers' International Union of North America, Local 183 (Complainant) v. Clarkson Construction Company Limited (Respondent). (*Withdrawn*).

1430-75-M: Labourers' International Union of North America, Local 183 (Complainant) v. L & M Striping Company Ltd. (Respondent). (*Withdrawn*).

1488-75-M: Christian Labour Association of Canada (Applicant) v. Smith & Elston Company Limited (Respondent). (*Withdrawn*).

1518-75-M: Labourers' International Union of North America, Local 183 (Applicant) v. Prospect Paving Limited and the Toronto Asphalt and Concrete Constructors Association (Respondent). (*Withdrawn*).

1525-75-M: Lake Ontario District Council, on behalf of Locals 397, 572, 1071, 1450 of The United Brotherhood of Carpenters and Joiners of America (Applicant) v. Huffman Construction Limited and H C Five Investments Limited (Respondents). (*Dismissed*).

1554-75-M: International Union of Operating Engineers, Local 793 On behalf of Gordon Beaudoin (Applicant) v. City Crane Co. Ltd. (Respondent). (*Withdrawn*).

1564-75-M: United Brotherhood of Carpenters and Joiners of America, Local Union No. 446 (Applicant) v. H. F. Dand Construction (Division of R. M. Elliott Construction, Sault Ste. Marie) (Respondent). (*Withdrawn*).

1576-75-M: United Brotherhood of Carpenters and Joiners of America, Local Union #446 (Applicant) v. Newman Brothers Company Limited (Respondent). (*Withdrawn*).

Applications For Reconsideration Of Board's Decision – Certification

6941-74-R: Christian Labour Association of Canada (Applicant) v. Point Anne Quarry Company, a division of Standard Industries Limited (Respondent). (*Request Denied*).

1437-75-R: Local 1590, International Brotherhood of Electrical Workers (Applicant) v. Bernardin of Canada Limited (Respondent). (*Request Denied*).



Labour Relations Board

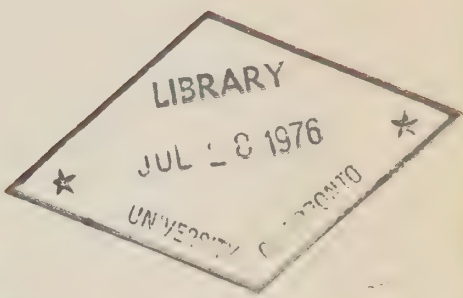
Ontario

Decisions

February 76

ONLR
054

Government
Publications



ONTARIO LABOUR RELATIONS BOARD

Acting Chairman RORY F. EGAN

Vice-Chairmen G.W. ADAMS
F.V. BOSCARIOL
K.M. BURKETT
D.D. CARTER
G.S.P. FERGUSON, Q.C.
R.A. FURNESS
D.H. KATES

Members H.J.F. ADE
D.B. ARCHER
J.D. BELL
E. BOYER
A. GRIBBEN
L. HEMSWORTH
O. HODGES
F.W. MURRAY
P.J. O'KEEFFE
J.E.C. ROBINSON, Q.C.
N. SATTERFIELD
H. SIMON
W.H. WIGHTMAN

Executive Assistant to the Chairman L.V. PATHE *Registrar* A.M. BRUNSKILL

Solicitor S.D. SAXE

Editor, Monthly Report S.D. SAXE

CASES REPORTED

Bernardin of Canada Ltd. Re L 1590, IBEW	30
Brown, Deborah. Mrs., & Mr. Stephen Lewis Re Mr. Paul Dillon	4
CJA And LU 1946 of CJA	10
Happe, F., Plumbing & Heating Ltd. Re PPF, LU46	38
Hoffman Concrete pro. Ltd. Re TCHW L 91 aff'l with TCHW And Group of Employees .	35
Leons Furniture Ltd. Re Retail Clerks U., L 486 And Group of Employees	8
Lummus Co. Canada Ltd., The, & Ont. Erectors Assoc. Re BSOIW, LU 700	16
Mississauga Public Library Bd., City of, Re Mississauga Public Library Staff Assoc.	1
Stratford Gen. Hospital Re The Civil Serv. Assoc. of Ont. And Assoc. of Allied Health professionals: Ont. And Group of Employees	41
Tamblyn, G., Ltd. Re RCIA	34
Wegu Canada Inc. And UAW	7
Wellesley Hospital, The, Re CUOE And Serv. Employees U., L 204 And IUOE, L 796 And Group of Employees	45
Westmount Hospital Re Ont. Nurses' Assoc.	24

INDEX OF CASES

Arbitration – Construction Industry – Collective Agreement – Whether collective agreement with closed shop arrangement and provision for union members to be brought in from other areas if required was violated by employer hiring only such numbers as could be locally supplied.	
THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 700 v. THE LUMMUS COMPANY CANADA LIMITED, AND THE ONTARIO ERECTORS ASSOCIATION	16
Arbitration – S112a – Damages – Where Board finds union dues and pension fund contributions owing by employer – Whether Board will award liquidated damages in accordance with provisions of collective agreement.	
UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION 46 v. F. HAPPE PLUMBING & HEATING LIMITED	38
Bargaining Unit – Displacement vote – A collective agreement defines the bargaining unit – Whether the Board will carve up the unit to separate out Maintenance Men from Stationary Engineers it being alleged that the maintenance men properly belong in another service bargaining unit.	
CANADIAN UNION OF OPERATING ENGINEERS v. THE WELLESLEY HOSPITAL v. SERVICE EMPLOYEES UNION, LOCAL 204 v. INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 796 v. GROUP OF EMPLOYEES	45
Certification – Membership Evidence – S6(1a) – Factors to be considered by the Board in the exercise of its discretion to grant interim certification – Effect of bargaining unit dispute preventing meaningful bargaining – Whether membership evidence must post date the date applicant took on trade union status.	
MISSISSAUGA PUBLIC LIBRARY STAFF ASSOCIATION v. CITY OF MISSISSAUGA PUBLIC LIBRARY BOARD	1
Collective Agreement – Arbitration – Construction Industry – Whether collective agreement with closed shop arrangement and provision for union members to be brought in from other areas if required was violated by employer hiring only such numbers as could be locally supplied.	
THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 700 v. THE LUMMUS COMPANY CANADA LIMITED, AND THE ONTARIO ERECTORS ASSOCIATION	16
Consent to Prosecution – S3, S56, S58(c) – Whether threats, intimidation or coercion used to block formation of a union – Requirement that respondent be acting on behalf of an employer – Effect of application for certification proceeding in any event – Whether S3 creates an offense.	
MR. PAUL DILLON v. MRS. DEBORAH BROWN, MR. STEPHEN LEWIS	4

Construction Industry – Collective Agreement – Arbitration – Whether collective agreement with closed shop arrangement and provision for union members to be brought in from other areas if required was violated by employer hiring only such numbers as could be locally supplied.	
THE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 700 v. THE LUMMUS COMPANY CANADA LIMITED, AND THE ONTARIO ERECTORS ASSOCIATION	16
Employees – Managerial exclusion – S1(3)(b) – Whether Head Nurses excluded.	
ONTARIO NURSES' ASSOCIATION v. WESTMOUNT HOSPITAL	24
Employees – Whether pharmacy managers and assistant pharmacy managers excluded under 1(3)(b). (Dissenting decision – majority decision in December [1975] OLRB Rep.).	
RETAIL CLERKS INTERNATIONAL ASSOCIATION v. G. TAMBLYN LIMITED	34
Membership Evidence – Application made by local, whether membership cards not showing number of local are valid – Whether cards can be amended by union business agent after the date they are signed and submitted by member – Whether bar to further application to be applied.	
LOCAL 1590, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS v. BERNARDIN OF CANADA LIMITED	30
Membership Evidence – Certification – S6(1a) – Factors to be considered by the Board in the exercise of its discretion to grant interim certificate – Effect of bargaining unit dispute preventing meaningful bargaining – Whether membership evidence must post date the date applicant took on trade union status.	
MISSISSAUGA PUBLIC LIBRARY STAFF ASSOCIATION v. CITY OF MISSISSAUGA PUBLIC LIBRARY BOARD	1
Membership Evidence – Whether payment of dollar, refundable if employee changed his mind, or if Applicant unable to sign sufficient number, or if application unsuccessful, valid evidence of membership.	
RETAIL CLERKS UNION, LOCAL 486 v. LEONS FURNITURE LIMITED v. GROUP OF EMPLOYEES	8
Parties – Practice – Whether association representing pharmacists in general but not claiming to represent any employee in particular application a proper party to make representations as to bargaining unit where case may set a precedent for hospital applications.	
THE CIVIL SERVICE ASSOCIATION OF ONTARIO v. STRATFORD GENERAL HOSPITAL v. ASSOCIATION OF ALLIED HEALTH PROFESSIONALS: ONTARIO v. GROUP OF EMPLOYEES	41

Petition – Reconsideration – Timeliness – Petition appearing to have been sent registered mail on day after terminal date Registrar informed petitioners they were untimely – Petitioners not appearing at certification hearing – Whether Board should reconsider, petitioners now producing evidence that petition was registered on and not after terminal date – Whether petition tainted by signature of management trainee who sometimes signs pay cheques or by signature of fleet supervisor excluded from unit as managerial.

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS WAREHOUSEMEN & HELPERS OF AMERICA v. HOFFMAN CONCRETE PRODUCTS LIMITED v. GROUP OF EMPLOYEES

35

Practice – Parties – Whether association representing pharmacists in general but not claiming to represent any employee in particular application a proper party to make representations as to bargaining unit where case may set a precedent for hospital applications.

THE CIVIL SERVICE ASSOCIATION OF ONTARIO v. STRATFORD GENERAL HOSPITAL v. ASSOCIATION OF ALLIED HEALTH PROFESSIONALS: ONTARIO v. GROUP OF EMPLOYEES

41

Reconsideration – Timeliness – Petition – Petition appearing to have been sent registered mail on day after terminal date Registrar informed petitioners they were untimely – Petitioners not appearing at certification hearing – Whether Board should reconsider petitioners now producing evidence the petition was registered on and not after terminal date – Whether petition tainted by signature of management trainee who sometimes signs pay cheques or by signature of fleet supervisor excluded from unit as managerial.

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA v. HOFFMAN CONCRETE PRODUCTS LIMITED v. GROUP OF EMPLOYEES

35

Termination – S51 – Whether union, having failed to bargain for a period in excess of 60 days, no longer represents the employees.

WEGU CANADA INC. v. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (U.A.W.).

7

Timeliness – Petition – Reconsideration – Petition appearing to have been sent registered mail on day after terminal date Registrar informed petitioners they were untimely – Petitioners not appearing at certification hearing – Whether Board should reconsider, petitioners now producing evidence that petition was registered on and not after terminal date – Whether petition tainted by signature of management trainee who sometimes signs pay cheques or by signature of fleet supervisor excluded from unit as managerial.

TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 91 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA v. HOFFMAN CONCRETE PRODUCTS LIMITED v. GROUP OF EMPLOYEES

35

Trusteeship – S73 – Application for consent to continue trusteeship – Effect of the trusteeship having lapsed before the application was filed.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA v. LOCAL UNION 1946 OF THE UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA

1539-75-R Mississauga Public Library Staff Association, (Applicant) v. **City of Mississauga Public Library Board**, (Respondent).

BEFORE: Kevin M. Burkett, Vice-Chairman, and Board Members P.J. O'Keeffe and J.E.C. Robinson, Q.C.

APPEARANCES: *Peter A. Broadhurst, Kay Barrow, Barbara Suthern and Mary-Ethel Bradley for the applicant; A.P. Tarasuk and Noel Ryan for the respondent.*

DECISION OF KEVIN M. BURKETT AND P.J. O'KEEFFE February 12, 1976.

1. This is an application for certification.
2. The applicant was called upon to prove its status as a trade union within the meaning of section 1(1) (n) of the Act. Mary-Ethel Bradley, a member of the Executive Board, testified in support of the status of the applicant. It was established that a predecessor clerical staff association had been formed in 1964 which was expanded in 1970 to include the professional staff of the Library. The expanded association made a decision in the summer of 1975 to become a trade union and to apply to be certified before the Ontario Labour Relations Board. Towards this end an amended constitution was drafted which has as an object the establishing of a collective agreement covering all terms and conditions affecting the employment status of the members of the association. At a meeting held on September 5, 1975 the amended by-laws and constitution were accepted, all applications for membership in the Staff Association were accepted, the amended by-laws and constitution were ratified by the members and in addition the 1975-1976 Executive Board was ratified by the members who were present.
3. In establishing its status a trade union must prove that as of the date of the application for certification, which in the case at hand was January 12, 1976, it was an organization of employees as evidenced by a constitution, by-laws or charter which has been ratified by its members and which has as an object regulation of relations between employees and employers. In addition it must show that as an organization it has duly appointed officers who can carry out its objects. In effect it must prove that it is a viable entity for purposes of collective bargaining. (See *York University* case (1975) OLRB Rep. February p. 127, *Alcan Universal Homes* case (1969) OLRB Rep. April p. 55). Having regard to the evidence with respect to the September 5, 1975 meeting, the Board finds that the applicant is a trade union within the meaning as set out in section 1(1)(n) of the Act.
4. All of the membership evidence submitted in support of this application for certification is dated subsequent to the September 5, 1975 meeting of the Association. It is timely therefore in so far as it pertains to an organization which at the time the employees signified their membership and paid the required one dollar was an organization which was a trade union within the meaning of the Act.
5. The parties were in dispute as to the description of the appropriate bargaining unit. The applicant sought to include department/branch heads within the scope of the unit and draw the line of managerial exclusion at the level of the Chief Librarian. The respondent, on the other hand, sought the exclusion of the department/branch heads from the bargaining unit. Accordingly the Board appoints Mr. J.E. Leonard, Labour Relations Officer,

to meet with the parties and to inquire into the duties and responsibilities of the department/branch heads who are employed on a regular basis for not more than twenty-four hours per week and to report to the Board.

6. The Board is satisfied after having examined all of the possibilities that the ultimate resolution of the bargaining unit dispute cannot affect the union's right to certification. The Board, therefore, requested submissions from the parties with respect to interim certification as provided for in section 6(1a) of the Act. The respondent asked the Board to exercise its discretion and not certify on an interim basis, arguing in support of its request that firstly, the nature of the bargaining unit dispute precludes negotiation of a grievance procedure and secondly, that the nature of the bargaining unit dispute hinders the employer in the selection of a bargaining committee and in his ability to communicate with those in the disputed classification on matters relating to bargaining.

7. Section 6(1a) states:

"Where, upon an application for certification, the Board is satisfied that any dispute as to the composition of the bargaining unit cannot affect the trade union's right to certification, the Board may certify the trade union as the bargaining agent pending the final resolution of the composition of the bargaining unit."

This section of the Act allows the Board to certify a trade union pending a resolution of a bargaining unit dispute in those situations where the ultimate determination by the Board cannot affect the right of the union to certification. Prior to its enactment a union which had established the required membership support could not commence to negotiate a first agreement and was required during this critical period of high expectations and uncertainty to await the final bargaining unit determinations. The amendment is designed to neutralize whatever prejudice may be suffered by a trade union and its constituents in these circumstances by confirming its right to certification and by permitting it to serve notice and to commence to bargain pending the resolution of bargaining unit disputes.

8. The bargaining unit dispute before us may be termed typical or normal. It involves a single classification which sits on the line of managerial demarcation. It must be assumed that the legislature envisaged precisely this situation when it enacted section 6(1a) and the Board, therefore, must be circumspect in exercising its discretion to withhold interim certification in circumstances such as these. This is not to infer, however, that if more than one classification was in dispute or if some fixed percentage of the potential bargaining unit was in dispute that the Board would withhold interim certification based on these factors alone. The exercise of the Board's discretion under section 6(1a) should never be based solely on the number of classifications in dispute or on the percentage of disputed persons in the proposed bargaining unit. The exercise of the Board's discretion must be on a *case to case* basis whereby the prime consideration is whether or not meaningful bargaining, on even a restricted number of items, can take place. If meaningful bargaining cannot take place, for reasons related to a genuine bargaining unit dispute, then the Board in the exercise of its discretion must consider the negative effect of placing the parties in a collective bargaining interface at that point in time.

9. The respondent has argued that in the circumstances before us it would not be possible to negotiate a grievance procedure. In certain situations the nature of the bargaining unit dispute might restrict the ability of the parties to formulate specific contract language. It may well be that in this case the parties could not negotiate a grievance procedure if interim certification were granted. Nevertheless, there are many non-monetary items which are unaffected by bargaining unit disputes and which can be negotiated during the interim period. Furthermore, although it is common bargaining strategy to resolve language items before monetary matters are negotiated, certain monetary items can also be discussed in the interim without prejudice to either party. The legislative intent of section 6(1a) is to permit the parties to proceed with those aspects of bargaining which are not dependent on a final resolution of bargaining unit disputes so as not to delay the onset of the already lengthy bargaining process. The Board ought not to withhold interim certification on the grounds that the bargaining unit dispute precludes the negotiation of certain items or precludes a conclusion to negotiations.

10. The respondent has also argued that it would be hindered in the selection of a bargaining committee and in its ability to communicate with those in the disputed classifications. Those below the rank of chief librarian would not normally formulate proposals or make decisions at the bargaining table although they might be a useful resource as regards departmental practices and procedures. An interim certification however, does not preclude the employer from making information requests of the department/branch heads just as it could if this classification were to be ultimately included within the bargaining unit. Although interim certification may result in a somewhat altered bargaining committee the Board does not accept that the respondent would be handicapped in the conduct of its negotiations to a degree which would warrant withholding interim certification and thereby causing delay which, in the normal course, the amendment was designed to circumvent.

11. The Board is not convinced that meaningful bargaining cannot take place between the parties at this point in time and as a result the Board is prepared to certify the applicant pursuant to section 6(1a) of the Act. The Board certifies the applicant as bargaining agent for all employees of the respondent in the City of Mississauga save and except department/branch heads, persons above the rank of department/branch head, students employed during the school vacation period and persons regularly employed for not more than 24 hours per week. For purposes of clarity the Board notes that:

- (a) The exclusion of department/branch heads does not include Mr. T. Verity as agreed at the hearing.
- (b) The department head Accounting/Personnel, the Accounting/Personnel assistant, the secretary to the Chief Librarian and the assistant to the secretary to the Chief Librarian are excluded from the unit by the agreement of the parties.

12. The procedure followed by the Board in granting interim certification is outlined in *The University of Ottawa* case 1975 OLRB Rep. Sept. p. 694. The Board stated in that case at paragraph 10:

“...Any certification at this stage must, obviously, exclude all disputed categories. It is equally obvious that their exclusion is not to be con-

strued as a pre-judgment by the Board on their status. Once their status has been finally determined, appropriate amendments, if any are required, will be made to the bargaining unit description. In the normal course, the Board would issue a formal certificate signed by the Registrar containing a full and complete description of the bargaining unit. In applications under section 6(1a) the Board is of the view that the formal certificate must await final determination of all disputes as to the composition of the bargaining unit."

13. Accordingly, a formal certificate must await a final bargaining unit determination.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.:

While I am in agreement with the ultimate disposition of the issues decided by my colleagues, I disassociate from many of the remarks made by them in invoking the provisions of section 6(1a) of The Labour Relations Act.

1588-75-U Mr. Paul Dillon, (Applicant) v. Mrs. Deborah Brown, Mr. Stephen Lewis, (Respondents).

BEFORE: Rory F. Egan, Acting Chairman, and Board Members J.D. Bell and E. Boyer.

APPEARANCES: *Paul Dillon for the applicant; E.L. Stringer, Q.C., and D. Brown for the respondent Mrs. Deborah Brown; J. Sack for the respondent Stephen Lewis.*

DECISION OF THE BOARD: February 20, 1976

1. This is an application for consent to institute a prosecution of the respondents for an alleged offence under The Labour Relations Act.
2. Prior to the date of the hearing, the applicant requested, and was granted, leave to withdraw his application insofar as it relates to Mr. Art Riseley.
3. The application came on for hearing before the Board on February 16, 1976. The applicant alleged that the respondents had attempted to block the formation of a union through the use of threats, intimidation, coercion and undue influence, contrary to sections 3, 56 and 58(c). Those sections read as follows:

3. Every person is free to join a trade union of his own choice and to participate in its lawful activities.

56. No employer or employers' organization and no person acting on behalf of an employer or an employers' organization shall participate in or interfere with the formation, selection or administration of a trade union or the representation of employees by a trade union or con-

tribute financial or other support to a trade union, but nothing in this section shall be deemed to deprive an employer of his freedom to express his views so long as he does not use coercion, intimidation, threats, promises or undue influence.

58. No employer, employers' organization or person acting on behalf of an employer or an employers' organization,

- (c) shall seek by threat of dismissal, or by any other kind of threat, or by the imposition of a pecuniary or other penalty, or by any other means to compel an employee to become or refrain from becoming or to continue to be or to cease to be a member or officer or representative of a trade union or to cease to exercise any other rights under this Act.

4. The issue of a consent to prosecute is a matter left by the Act to the discretion of the Board. Before the Board arrives at the point as to whether in its discretion a consent should issue, it requires the applicant to establish a *prima facie* case or to raise an arguable point of law. In the absence of either of these elements, consent will not issue. However, even if one or the other of the elements is present, the Board, in the exercise of its discretion, will not issue a consent to institute a prosecution if it appears that no useful purpose, from the industrial relations point of view, would be served in granting such consent.

5. Mr. Lewis was called to the witness stand by the applicant. His evidence comprises all of the testimony upon which the Board bases its finding and decision.

6. The evidence is that in or about the third or fourth week of November 1975, Mr. Lewis had a conversation with Mrs. Deborah Brown, who is referred to as Executive Director of Browndale in the application. He discussed with her certain problems that had arisen with respect to management people in the Browndale operations in the Haliburton area. The conversation arose at the Brown household where Mr. Lewis had gone to pick up his daughter who had been staying with Mrs. Brown, a friend of the family. At the time of that conversation, no question arose with respect to any union activity among employees of Browndale. About a week later, however, during a further telephone conversation with Mrs. Brown, Mr. Lewis was made aware of the fact, that the Canadian Union of Public Employees (hereinafter referred to as C.U.P.E.) was attempting to organize employees of Browndale in the Haliburton area. Mr. Lewis related to the Board that entirely upon his own initiative he indicated to Mrs. Brown that he would like to pursue the matter with C.U.P.E. He said that he hoped that in the process there could be a union to cover all of Browndale's operations. Mr. Lewis said that he received the telephone call because he and Mrs. Brown were friends and she was seeking his advice. He emphasized that in no sense were any instructions given to him or attached to the request for advice.

7. Mr. Lewis said that he has a good relationship with C.U.P.E. which is why he thought he might speak to them and why he felt comfortable in doing so. He called Mr. Riseley, an official of C.U.P.E. with whom he is friendly, and asked him to consider delaying the application so that the management problems could be resolved. He mentioned to Riseley the possibility of getting across-country certification once the management difficulties were settled.

8. Mr. Lewis also discussed the matter with Stan Smith, the local organizer of the union's campaign in the Haliburton area. Mr. Lewis told Smith of his conversation with Mr. Riseley. He explained to him that he was concerned for the "kids", the program carried on by Browndale, and the resolution of the managerial problems. He put to Smith for his consideration the question as to whether the application for certification could be delayed until the management problem was resolved. He also told Smith that perhaps there could be a resulting all-province bargaining unit. In response to a statement by Smith, Mr. Lewis asked him where his, that is Smith's, concern for the employees would be if the Browndale program were to be closed down. The Board is of the opinion that the applicant regarded this latter remark as a threat. While the Board finds that the interpretation of the remark by the applicant is not entirely unreasonable in the circumstances, it, nevertheless, is satisfied that the remark was made simply out of concern on the part of Mr. Lewis, that unless the management issue were settled the whole business might come to an end. Mr. Lewis said to Smith that of course it was the latter's right to proceed with the certification application. He suggested that Smith might contact Mrs. Brown but did not pursue the matter any further. At no time was any attempt made to speak to the employees concerned in the application for certification and the requests were thus confined to the union.

9. It is a matter of record that neither Riseley nor Smith were deterred in their course by Mr. Lewis' request. The application for certification was duly made and has been processed in the normal manner by the Board. This is a matter which may become significant if the question of the exercise of the Board's discretion arises by reason of the evidence.

10. There can be no doubt whatever upon the evidence that Mr. Lewis, upon being appealed to for advice by Mrs. Brown, decided, on his own, to use his good offices in a concerned attempt to resolve all the problems surrounding Browndale in the Haliburton area and that he acted throughout in good faith in what he believed were the best interests of the "kids", the employees, the management, the union and the program of Browndale as a whole.

11. It might well be, however, that, notwithstanding obvious good intentions, the Board, provided it was satisfied that all other elements were present, would be constrained to find that the approach to the union to delay its application for certification amounts, *prima facie*, to a violation of sections 56 and 58 of the Act or that it raises an arguable point of law, at which point the Board would be obliged to determine if any useful purpose would follow through the institution of a prosecution.

12. It was argued by counsel for Mr. Lewis that sections 56 and 58 of the Act are directed toward the regulation of the conduct of employers, employers' organizations and persons acting on their behalf in dealing with trade unions. In order, therefore, to support an application based on those sections, an applicant must establish that the respondent falls within one of the above categories. In the present instance, Mr. Lewis, in response to the questions put to him, testified that he acted in this matter entirely upon his own initiative and that he took the course of action that he did without any instructions or suggestions from Mrs. Brown as to what he should do. Although there is some suggestion in the evidence that priority was given in his considerations to the settlement of the management problem, the Board finds that, on a view of the evidence as a whole, Mr. Lewis cannot be said to have been acting on behalf of an employer within the meaning of sections 56 and 58

of The Labour Relations Act. There is consequently absent one of the essential elements of the offences created by sections 56 and 58 of the Act. (Section 3 contains only a declaration of rights and does not create an offence.) The application insofar as Mr. Lewis is concerned must be dismissed on this ground alone.

13. Finally, it should be observed that, in any event, since the application for certification went forward in the normal way, no useful purpose would be served with respect to labour relations by the granting of a consent in the circumstances of the present case.

14. No evidence was adduced with respect to Deborah Brown other than that contained in the testimony of Mr. Lewis. That evidence plainly does not support the allegations contained in the application with respect to Deborah Brown.

15. In the result, the application is dismissed with respect to both respondents.

1595-75-R Wegu Canada Inc., (Applicant) v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (U.A.W.) (Respondent).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members A. Gribben and J. E. C. Robinson, Q.C.

APPEARANCES: *S. C. Bernardo and K. O. Luddemann appearing for the applicant; no one appearing for the respondent.*

DECISION OF THE BOARD: February 18, 1976

1. The applicant has applied to the Board under section 51 of The Labour Relations Act for a declaration that the respondent no longer represents the employees in the bargaining unit for which it is the bargaining agent.

2. The evidence before the Board established that the respondent was certified by the Board on May 21, 1975. In a letter dated May 28, 1975, the respondent gave the applicant written notice of its desire to bargain with a view to making a collective agreement. The applicant and the respondent met and bargained on June 16, July 2 and 4, 1975. Since July 4, 1975, there have been no further meetings between the applicant and the respondent and they have not signed a collective agreement. In addition, there has not been a request for the appointment of a conciliation officer.

3. On December 12, 1975, counsel for the applicant wrote a letter to the respondent in which he asked the respondent to confirm an understanding that the respondent would not be proceeding to conciliation. Counsel stated he would appreciate a confirmation by the respondent that it no longer had an interest in the negotiations.

4. On January 9, 1976, counsel for the applicant advised the respondent by registered mail that if the respondent had a continuing interest he would appreciate hearing from the respondent. In a letter dated January 12, 1976, the respondent advised the applicant that when the respondent discontinued its interest the applicant would be the first to be notified.

5. This application was filed on January 29, 1976. In a letter dated February 5, 1976, the respondent advised the Board that it would not be appearing at the hearing.

6. Having regard to the evidence before it, the Board finds that the respondent trade union has given notice under section 13 and has commenced to bargain with the applicant. However, pursuant to section 51(2) of The Labour Relations Act, the Board further finds that the respondent trade union has, after commencing to bargain but before the Minister of Labour has appointed a conciliation officer or mediator, allowed a period of sixty days to elapse during which it has not sought to bargain. The respondent trade union has not offered any explanation for its conduct.

7. In the light of the period of time which has elapsed since the respondent has not sought to bargain and to the failure of the respondent trade union to file a reply or attend at the hearing, the Board is of the opinion that the applicant is entitled to the relief which it is seeking without the taking of a representation vote. Reference is made to the *Army, Navy and Airforce Veterans in Canada – Fort William Unit No. 257* case, OLRB M.R. August 1967, p. 457 and to the *West End Chrysler Dodge Ltd.* case, OLRB M.R. November 1968, p. 839.

8. The Board therefore declares that the respondent trade union no longer represents the employees of the applicant at Whitby for whom it has heretofore been the bargaining agent.

0831-75-R Retail Clerks Union, Local 486, (Applicant) v. **Leons Furniture Limited**, (Respondent) v. Group of Employees, (Objectors).

BEFORE: George W. Adams, Vice-Chairman, and Board Members H.J.F. Ade and A. Gribben.

APPEARANCES: *J.A. Ryder for the applicant; R.C. Filion and G.J. Leon for the respondent; no one appearing for the objectors.*

DECISION OF THE BOARD: February 18, 1976

1. This is an application for certification.

2. At the outset of the hearing the respondent questioned the validity of the applicant's membership evidence. It alleged that the membership cards had been obtained from employees on the understanding that the \$1.00 initiation fee would be repaid on request or if the application was unsuccessful

3. After reviewing the evidence in its totality we are satisfied that Jean Compeau, an organizer of the applicant, told the overwhelming majority of the employees that they could get their dollar back (i) if they changed their minds; (ii) if the applicant was unable to obtain a sufficient number of membership cards; and (iii) if the application was unsuccessful. We are satisfied that these representations were conveyed to the employees before they signed membership cards and that they are likely to have relied on the information.

4. Numerous cases have come before the Board where trade union officials, while in the process of soliciting membership, have promised prospective members that their \$1.00 payment would be returned to them if the application for certification was dismissed. (See *De Laval Co. Ltd.*, 52 CLLC, 17,031 (OLRB); *Continental paper products Ltd.*, 55 CLLC, 18,012 (OLRB);- *M. Loeb Ltd.*, [1961] OLRB Mthly. Rep. 172; *Northern Electric Co. Ltd.*, [1965] OLRB Mthly. Rep. 101; *Hamilton Boiler Works*, [1965] OLRB Mthly. Rep. 623; *Wheatley Mfg.*, [1964] OLRB Mthly. Rep. 457; *Crane Canada Ltd.*, [1968] OLRB Mthly. Rep. 570.) In the *De Laval Co. Ltd.* case the Board made the following observation:

The Board has stated on many occasions that a payment conditioned on the outcome of an application for certification is not acceptable as evidence of membership in support of that application. Such a payment is not evidence of membership; at best it is evidence of a willingness to become a member in a certain eventuality.

On the other hand, the panel in *Crane Canada Ltd.* gave a somewhat different reason for dismissing the application in emphasizing that a conditional membership payment did not meet the Board's requirement that there be a financial sacrifice on the part of the prospective union members. This notion of financial sacrifice seems to have been discussed first in *RCA Victor Ltd.*, 53 CLLC, 17,067 (OLRB) wherein it was expressed that a money payment was necessary to constitute confirmatory evidence of the desire of the payer to become a member of the trade union. In other words, the Board was saying that it wants to be assured that the employees who are alleged to have become members have directed their minds and given careful thought to the implications of such a step. Moreover, the Board has time and time again emphasized that it must exact and protect stringent standards with respect to membership evidence in that other parties to a certification proceeding do not have the opportunity to examine the membership evidence nor in the usual case do parties have the opportunity to cross-examine the witnesses with respect to membership evidence. (See *Zehr's Markets Ltd.*, [1972] OLRB Mthly. Rep. 635.)

5. These requirements of the Board are clear and well known and we are loathe to deviate from them. Despite the apparent arbitrary nature of such rules they fulfill three important functions – cautionary, evidentiary, and channelling.

The *RCA Victor* case outlines the cautionary nature of the requirement and *Zehr's Markets Ltd.* is representative of the evidentiary perspective. The third function – that of telling employees and trade union's how membership in a trade union can be obtained for the purposes of the Act – is important to both the Board and the parties. Clear and unequivocal rules in this important area provide the kind of predictability and certainty that is required for organizational purposes and minimizes the amount of "litigation" before the Board. Thus the certification process is expedited and the secrecy as to union membership provided under section 100 is accomplished. In other words, the more the Board deviates from its ac-

cepted practice the more parties will be encouraged to litigate the question of membership evidence with all the attendant costs of such disputes.

6. For all of these reasons, we find that the applicant has filed insufficient membership evidence regardless of the possible bargaining unit variations and the application is dismissed.

T-74-74 United Brotherhood of Carpenters and Joiners of America, (Applicant) v. **Local Union 1946 of the United Brotherhood of Carpenters and Joiners of America,** (Respondent).

BEFORE: George W. Adams, Vice-Chairman, and Board Members W. Lisson and J.E.C. Robinson, Q.C.

APPEARANCES: *L.A. MacLean, W. Stefanovitch and T.G. Harkness for the applicant; Arnold Marsman, Arthur Dix and Logie Armstrong for the respondent.*

DECISION OF THE BOARD: February 17, 1976

1. This is an application for the Board's consent to the continuation of trusteeship over a local union.
2. We want to note that, after both the hearing of this matter and an executive meeting by the panel, Board Member William Lisson passed away. After the executive meeting the Board was unanimously in agreement as to the disposition of the case. However, a written draft decision was not prepared until after Mr. Lisson's death. Accordingly, he never approved the final form of the decision. This fact was communicated by the Board to the parties and the applicant agreed that the matter could be disposed of by the surviving members of the Board in accord with their understanding of the decision arrived at in the above-mentioned executive meeting. The respondents have not explicitly communicated their position in this respect, but as it happens, their consent would appear to be unnecessary in that the panel decided to dismiss the application as they requested.
3. On May 23rd, 1974 a committee was appointed by the General President of the applicant pursuant to section 10-J of the applicant's constitution to hold hearings and to report its findings and recommendations in connection with the affairs of Local Union 1946, United Brotherhood of Carpenters and Joiners of America. The committee convened hearings in London, Ontario on June 19, 20 and 21, 1974 after which it issued a report that was concurred in by the General Executive Board on August 3, 1974.

Under the heading "Recommendations", the report read:

1. That the conducting of the affairs of Local Union 1946 be placed under *full* supervision in order to insure that the legitimate objects of the United Brotherhood are carried out in the field of organizing; co-operation and as-

sisting the Western Ontario District Council and its affiliates; and acting generally in the best interests of the United Brotherhood. [emphasis added]

2. That a supervisor be appointed to assume *full and complete* authority over the conduct of the affairs of Local Union 1946, including the authority to conduct or cancel meetings; and that the supervisor be granted full authority to remove, replace and appoint any and all officers, business representatives, stewards, delegates and committees on or employees of the Local Union as may be deemed necessary to insure the proper exercise of his authority over the proper functioning of the Local Union. [emphasis added]

4. By letter dated August 9, 1974, Mr. William Sidell, General president of the applicant, advised the officials of Local 1946 that General Executive Board Member William Stefanovitch had been assigned "to assume complete supervision over the conduct of the affairs of Local 1946". The letter read:

Dear Sir and Brother:

Enclosed herewith is a copy of the Report dated August 1, 1974 submitted by the Committee appointed by me to inquire into the conduct of the affairs of Local Union 1946.

The Report was submitted to the General Executive Board of the United Brotherhood at its meeting held on August 3, 1974 and the General Executive Board concurred in the Report and directed that its recommendations be implemented.

Accordingly, I have assigned General Executive Board Member William Stefanovitch to assume complete supervision over the conduct of the affairs of Local Union 1946.

Brother Stefanovitch will be assisted in carrying out the supervision by General Representative Thomas Harkness.

The supervisor shall have full and complete authority over the conduct of the affairs of Local Union 1946, including the authority to conduct or cancel meetings; and the supervisor shall be granted full authority to remove, replace and appoint any and all officers, business representatives, stewards, delegates and committeemen or employees of the Local Union as may be deemed necessary to insure the proper exercise of his authority over the proper functioning of the Local Union.

Supervision over the Local Union shall continue until such time as it appears that the Local Union is capable of conducting its affairs in accordance with the Constitution and Laws of the United Brotherhood and in the interests and for the welfare of the membership.

Full cooperation of all officers and members is expected.

Fraternally yours,
[sgd] "William Sidell"
GENERAL PRESIDENT

5. Pursuant to section 73(1) of the Ontario Labour Relations Act, the applicant filed with the Board a statement dated September 11, 1974 setting out the terms under which supervision or control was to be exercised. para. 3 of this statement reads:

3. Date on which supervision or control was assigned:

August 9, 1974

6. By letter dated August 13, 1974 Mr. William Stefanovitch advised Mr. D. Noble, Recording Secretary of Local 1946, of his assignment in the following terms:

Dear Sir and Brother:

I note by copy of the letter that General President W. Sidell sent to you under date of August 9th that you are aware of the fact that the writer has been assigned to assume supervision over Local Union 1946 in accordance with the recommendations of the report and action of the General Executive Board.

It is my desire to meet with the executive officers of Local Union 1946 and its Business Representative on September 5th at 7:30 p.m. at the Labour Temple, 363 King St. London, Ontario; would you please advise all officers to be in attendance.

Fraternally yours,
Wm. Stefanovitch
General Executive Board Member

Apparently some confusion with respect to the terms of his mandate arose causing him to write to both Ms. Cora Ellison, the office secretary employed by Local 1946, and Mr. Fred Collver, a business representative. These letters, both dated August 16, 1974, read:

Dear Ms. Ellison:

This will confirm our phone conversation held earlier this week at which time I advised you that Local Union 1946 has been placed under supervision and that the writer has been named as the supervisor.

All directions and instructions with respect to your duties within Local 1946 will from here on in be that as you will receive from me or as I may from time to time rely through Int. Rep. T. Harkness.

If you find it necessary at anytime to contact me in. connection with any matter, please call me at my office 519-258-8444 or my home 519-945-4850.

Yours truly,
Wm. Stefanovitch
General Executive Board Member

Dear Sir and Brother: [F. Collver]

This will confirm our phone conversation held earlier this week at which I advised you as follows:

That Local Union 1946 has been placed under supervision and that the writer of this letter has been named as supervisor; the General Executive Board's report and action on this matter is being forwarded to you under separate cover.

Effective as of August 12, 1974 you will take all direction and instructions with respect to your duties from me or as they may be relayed by me through Int. Rep. T. Harkness.

You will forward to the writer and Int. Rep. T. Harkness each week a report of your activities, said report will state what organizing took place, number of jobs visited, number of persons signed up as new members, meetings attended and grievances filed. Your report will also contain such other information as you feel is required.

Fraternaly yours,
Wm. Stefanovitch
General Executive Board Member

Finally, the following letter, also dated August 16, 1974, was addressed to Mr. J. Podgornik, President of Local Union 1946. It read:

Dear Sir and Brother:

As you are aware Local Union 1946, by action of the General Executive Board, has been placed under supervision and that the writer of this letter has been placed as supervisor.

I am sure you are also aware of the fact that I have called for a meeting of the executive of Local 1946 to be held on September 5th at the Labour Temple at 363 King St. in London.

I am advising you at this time that I expect you to see to it that no cheques are issued except for the normal operations of the Local, normal operations mean payment of salaries, Per Capita Tax, rent, office supplies, and phone bill; expenses other than that stated herein are not to be paid unless approved by the writer.

At a later date I shall be examining all records of the Local including the financial records and all audits of the said financial records; I shall also determine at a later date whether an additional audit is necessary.

I will be expecting your co-operation in all of the matters referred to herein.

Fraternally yours,
Wm. Stefanovitch
General Executive Board Member

7. Following the sending of these letters it would appear that Mr. Stevanovitch received very little co-operation from the officials of Local Union 1946 in implementing his assigned task. They commenced litigation against the applicant on September 5th, 1974 requesting, in effect, a declaration that the supervision was unlawful and an injunction restraining the applicant. On October 17, 1974 Mr. Stefanovitch, pursuant to his assignment and the powers thereto, removed Mr. J. Podgornik, Mr. Ron Meats, Mr. Alphonse Cresces, Mr. Robert Nichols, Mr. D.L. Noble, Mr. Arnold Marsman, Mr. Gordon Irvine, Mr. B.S. Simpson, Mr. E.C. Lovie and Mr. Donald Durward from their respective offices as Local Union 1946 officials and on behalf of the applicant commenced litigation in the Supreme Court of Ontario against these same persons, save for Nichols, seeking in effect, a declaration that the supervision was lawful and an injunction restraining their actions.

8. This application, pursuant to section 73(2), for the Board's consent to the continuation of "the supervision or control" is dated October 2, 1975 and presumably was filed with the Board on or about this same date. Thus the issue arises as to whether the Board has jurisdiction to grant its consent to the continuation of the supervision or control of the applicant if the supervision and control having commenced on August 9, 1974, came to an end on August 9 1974, pursuant to the terms of section 73(2). The question arises because the word "continue" used in section 73(2) suggests that the supervision or control of an applicant has not lapsed at the time it seeks the Board's consent.

9. Section 73 reads:

73.-(1) A provincial, national or international trade union that assumes supervision or control over a subordinate trade union, whereby the autonomy of such subordinate trade union, under the constitution or by-laws of the provincial, national or international trade union is suspended, shall, within sixty days after it has assumed supervision or control over the subordinate trade union, file with the Board a statement in the prescribed form, verified by the affidavit of its principal officers, setting out the terms under which supervision or control is to be exercised and it shall, upon the direction of the Board, file such additional information concerning such supervision and control as the Minister may from time to time require.

(2) Where a provincial, national or international trade union has assumed supervision or control over a subordinate trade union, such supervision or control shall not continue for more than twelve months from the date of such assumption, but such supervision or control may be continued for a further period of twelve months with the consent of the Board.

10. The applicant took three alternative positions to the issue. It first argued that section 73 only pertains to supervision or control “whereby the autonomy of [a] subordinate trade union, under the constitution or by-laws of the provincial, national or international trade union is suspended”. The twelve month period stipulated in section 73(2) only applies to supervision or control by a parent that has such an effect. Thus the applicant argued that initially the supervision or control of the applicant through Stefanovitch did not amount to a suspension of Local 1946’s autonomy until, at the very earliest, October 17, 1974, when its officers were removed from office. Accordingly, it was submitted that the twelve month period would not have lapsed by October 2, 1974. Alternatively, the applicant submitted that because of “the active resistance and interference by deposed officers of Local 1946, and an action instituted by them in the Supreme Court of Ontario on the 5th of September, 1974, the actual assumption of supervision and control was delayed until December 1974 and has not been complete and is not completed to date”. The applicant submitted that the legislature must have intended the twelve month period to embrace twelve months of “effective” control or supervision. Any other interpretation would only encourage vexatious litigation in the early stages of a trusteeship aimed at frustrating the efforts of the parent. Thus the Board was asked to find that the twelve month period stipulated in section 73(2) only applied to a period of “effective” supervision or control by a parent and that given the actions of the deposed officials of Local Union 1946, the period had not yet lapsed – or at least had not lapsed by the date of the application. In fact, this argument, if taken to its logical conclusion, ought to result in the finding that the twelve month period has not yet commenced in that para. 7(b) of the application alleges that the actions of Noble and Armstrong continue to frustrate the supervision. Finally, the applicant submitted that even if the twelve month period had elapsed before the application was filed with the Board, the Board has implied power to continue the supervision or control *nunc pro tunc*. In this regard it was submitted that *The Labour Relations Act* is remedial legislation and that therefore the Board’s supervisory or remedial authority ought to receive a broad interpretation. It was further submitted that the particular defect in the application was of minor nature and, being such, the policy expressed in section 103 – that “no proceedings under this Act are invalid by reason of any defect of form or any technical irregularity” – provided the Board with jurisdiction to overlook the application’s tardiness in that no prejudice could be established. (See also *The Judicial Review Procedure Act*, 1971 S.O. 1971, c. 48, s. 3.)

11. We have reviewed these submissions and have concluded that the application should be dismissed. First, we find that supervision or control, within the meaning of the legislation as defined above, occurred on August 9, 1974. Mr. Sidell’s letter of August 9, 1974 to Local Union 1946 officials and the report of the section 10-J committee make it clear that full and complete authority over the affairs of Local 1946 had been vested in Mr. Stefanovitch as of August 9, 1974. Moreover, the applicant itself recognized this fact by filing the appropriate statement with the Board with reference to the August 9th date. Thus, the fact that a supervisor might not exercise the full panoply of powers vested in him until some time after August 9, 1974 in no way challenges the fact that Local 1946 no longer possessed its autonomy after August 9, 1974 – if autonomy is taken to mean independence or freedom or the right to self-government. (See *The Random-House Dictionary* (1966) 101.) Further, even if section 73 is to be interpreted with reference to the date upon which a supervisor actually exercises his supervisory power in such a way as to suspend the autonomy of a subordinate trade union, we find Mr. Stefanovitch effectively suspended Local 1946’s autonomy when he wrote his letters of August 16, 1974 to Ellison, Colver and Podgornik, reproduced above. As of that date he formally inserted himself as the effective decision-making element within the local union.

12. This brings us to the issue of the Board's powers under section 73(2) where supervision or control has lapsed as a result of the statutory limitation found in the same subsection. We prefer to avoid a conclusive ruling on the issue at this time in that it is our opinion that even if the Board possesses the power to continue a trusteeship that has lapsed the power ought not to be exercised in the circumstances. None of the litigation, proposed settlements, and alleged actions of the deposed Local Union 1946 officials caused the applicant's failure to file its application under section 73(2) within the twelve month period. Further, if the Board has the power to give its consent in such circumstances we believe the exercise of the power should not be based on whether the members of a subordinate union have been prejudiced but rather on whether the applicant has exercised reasonable diligence in filing the application. Prejudice to others is so difficult to establish and would often require the attendance of a large number of individuals at the Board's hearing. Moreover, any period during which the control or supervision of a subordinate trade union is in doubt due to the expiration of the statutory period is inherently prejudicial to anyone connected with or dealing with that subordinate trade union. For these reasons, we find the balance of convenience is in favour of the Board adopting the "reasonable diligence" test and a test the applicant was unable to meet. (For another example of the Board's adoption of the test see *H.D. Lee Company of Canada Limited* [1975] OLRB Mthly. Rep. 55.) The application is dismissed.

1406-75-M The International Association of Bridge, Structural and Ornamental Ironworkers, Local Union 700, (Applicant) v. **The Lummus Company Canada Limited**, and The Ontario Erectors Association, (Respondent).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members H. J. F. Ade and E. Boyer.

APPEARANCES: *R. Koskie, T. Kutner and P. Doyle for the applicant; R. C. Fillion and W. Robb for the Lummus Company Canada Limited; R. B. Cumine for the Ontario Erectors Association.*

DECISION OF THE BOARD: February 4, 1976

1. This is a reference filed under section 112(a) of the Act where it is alleged that the Lummus Company of Canada Limited (hereinafter referred to as "the respondent company") has violated several provisions of the subsisting collective agreement between the applicant trade union and The Ontario Erectors Association (hereinafter referred to as "the respondent association"). At the outset of these proceedings the parties advised the Board that at all material times the respondent company was properly bound by the terms of the collective agreement entered into between the applicant trade union and the respondent association.

2. The respondent company is a general contractor that specializes in construction projects in the heavy engineering sector of the construction industry. At all material times the company was retained as "the prime contractor" in the construction of a petrochemical plant in Coronna, Ontario. The respondent company was hired to perform the functions of

prime contractor by “Petrosar” (hereinafter referred to as “the client”), a consortium of companies holding Federal charters engaged in business in the petrochemical industry. There is no dispute that the construction of this petrochemical plant is a major project and will require a large number of tradesmen at each phase of construction.

3. The respondent association is an employer’s association accredited by this Board on behalf of employers engaged in the sector and territorial jurisdiction affected by the “petrosar project”. The applicant trade union is the exclusive bargaining agent of employee tradesmen engaged by employers represented by the respondent association in the same sector and territorial jurisdiction. The respondent company is an employer contractor whose industrial relations with its employees are governed by operation of law by the terms and conditions of the subsisting collective agreement between the applicant and respondent association. (See; *The Labour Relations Act* R.S.O. 1970 c. 232 ss 116&117).

4. The facts and circumstances giving rise to this dispute are relatively straightforward. In accordance with “the closed shop” provisions of the collective agreement the respondent company is required to obtain its tradesmen through the applicant’s hiring hall. For this purpose the applicant maintains throughout its territorial jurisdiction a main office in Windsor and two sub-offices in Sarnia and London. At each office a rostrum of approximately 200 local resident tradesmen is maintained. It appears that the employer is entitled to exhaust the services of tradesmen closest to the project upon requisitioning the trade union for skilled tradesmen. In the event that no “locals” are available the union in order to meet the contractor’s requirements is bound to supply tradesmen from the nearest sub-office and upon that source being exhausted recourse is made to the next sub-office. In the event “outsiders” are engaged on the project, the employer is bound to comply with and pay both the travel and board allowances negotiated under Article 2.2 of the collective agreement and the schedules attached thereto. At this point it may be helpful to refer directly to the relevant provisions of the collective agreement;

ARTICLE 25 – MANAGEMENT RIGHTS

The Union acknowledges that it is the exclusive function of an Employer to:

25.1 Maintain order, discipline and efficiency.

25.2 Hire, discharge, transfer, demote, promote, or discipline employees, provided, that a claim for discriminatory promotion, demotion or transfer or a claim that an employee has been discharged or disciplined without just cause may be the subject of a grievance and dealt with as herein provided.

25.3 Generally manage the enterprises in which the Employer is engaged and, without restricting the generality of the foregoing, to determine the locations of the work places, the materials, methods, machines and tools to be used in the execution of the work and the working schedules, subject to the terms of this Agreement.

ARTICLE 2 – UNION SECURITY

2.1(a) As a condition of employment it is agreed that only members of the International Association of Bridge, Structural and Ornamental Ironworkers shall be employed on work, coming within the Scope of this Agreement. All employees shall keep up-to-date with their dues and assessments. Employees who fall in arrears with their monthly dues and/or travel service dues assessments while in the employ of an Employer shall be removed from the job at the request of the Business Agent upon presentation of acceptable evidence to support the request. The Employer agrees to only hire employees who present referral slips issued by the Local Union in whose territory the work is being performed. The Employer shall have the right to request employees by name, in writing, who shall be issued a referral slip by the Local Union. The number of employees so requested by name shall not exceed fifty percent (50 percent) of the employees supplied to the job by the Local Union, subject to the Local Union being able to supply. This right to request shall not be abused. Employee members who are transferred within the territory of their Local Union by an Employer will not require an additional referral slip. However, such transfers will not result in lay-off of employee members presently on these projects.

2.2 Should the Local Union be unable to supply sufficient qualified Local Union members to meet the Employer requirements, then the Local Union will bring in Union members from the closest sub-office or sub-offices in the territory of the Local Union or then the closest signatory Local Union where Union members are available. Such Union members will receive their fare to the job site and subsistence allowance applicable to their sub-office or to the home Local of the member. Abuse of the intent of this clause and the unjustified receipt by any Employee of subsistence allowance, will be a violation of this Agreement and subject to the Grievance procedure.

2.3 If the Local Union is unable to supply qualified Union Members in accordance with Article 2.1 and 2.2 within forty-eight (48) hours (Two working days), or time mutually agreed upon, then the Employer may secure additional employees from any other source and will notify the Local Union of the person so engaged. Such employees must secure a referral slip from the Local Union before they start to work. probationary employees will be replaced by qualified Local Union members when they become available. This shall be at no extra cost to the Employer, and will not be cause for grievance by any probationary employee.

An Employer will notify the Local Union as soon as possible, but no later than twenty-four (24) hours prior to any job starting, and will advise the approximate number of Local Union members required.

2.7 An Employer agrees not to subcontract or sublet any work covered by this Agreement to any person, firm or corporation which is not in contractual relationship with the International Association of Bridge, Structural and Ornamental Ironworkers.

An Employer also agreed not to reassign work to any subsidiary or related Company for the purpose of defeating the intent or provisions of this Collective Agreement.

5. The nearest sub-office to the client's project in Coronna is in Sarnia. The offices in London and Windsor would follow in the event sufficient "locals" were not available to meet at a given time the respondent company's manpower requirements. It appears in addition to the Petrosar project other construction projects were engaged in by employer-contractors in the territorial jurisdiction covered by the collective agreement between the applicant and the respondent association. For example, we were informed by Mr. Doyle, the applicant's business agent, that several contractors such as Canadian International Comstock Co. Limited, Lackie Brothers Limited, Nadrofsky Steel Erectors Limited and Robertson Building Systems Limited were each making demands on the applicant to service its projects with tradesmen. So long as these projects were being serviced by union tradesmen from whatever source the applicant satisfied its members with continued employment bereft of any employee grievances. Indeed, Mr. Doyle informed the Board that up until the circumstances giving rise to the instant grievance, an employer-contractor did not hesitate to pay travel and board allowance for non-resident tradesmen.

6. The respondent company began work on the Petrosar project some three years prior to the filing of this reference. The applicant trade union had been servicing the company's manpower requirements for journeymen iron workers, apprentices and journeymen welders for approximately two years. The company generally has complied with the terms of the collective agreement and its relationship with the applicant trade union was relatively free of dispute. At or about the time of negotiating the subsisting collective agreement in May, 1975, difficulties began to arise with respect to engaging "outside" tradesmen on the petrosar project. The respondent company, although continuing at all material times to requisition without apparent restriction the applicant for qualified tradesmen, nevertheless refused to accept tradesmen who would otherwise be entitled to travel and board allowance. For example, in November, 1975, an order for approximately forty-five journeymen iron workers remained outstanding. The applicant could not satisfy the company's requirements from its Sarnia sub-office but had sufficient qualified tradesmen available in London and Windsor. The company's position at that time is described in its letter to Mr. Doyle dated November 7th, which reads in part:

"Dear Pat:

I wish to confirm our conversation on Tuesday, November 4th with you and your shop steward, and also on November 6th with Jim Harrower, that we are not prepared to accept members from outside areas at this time who require payment of subsistence allowance, and all members should be referred to us only from the local Sarnia area. ...

Yours very truly,
The Lummus Company Canada
Limited

"T. E. Duncan"
Construction Director"

7. Deliberations between representatives of the applicant trade union and representatives of the respondent company with respect to this difficulty covered the period between July and November, 1975. It was made abundantly clear to the applicant trade union during this time span both through conversation and written correspondence that the respondent company was simply not prepared to accept "outsiders" on the client's project so long as they remained obliged to pay subsistence and travel allowance. Concurrently with these discussions Mr. Doyle informed us that "a majority" of the contractors whose manpower requirements the applicant serviced, refused in a like manner to accept "outsiders" on their projects. The explanation for this state of affairs was recited by Mr. Doyle. He indicated that pressure was being exerted by "Petrosar" and the Sarnia Construction Association on employer contractors engaged in projects in the area not to incur the obligations of paying subsistence and travel allowance. Underlying this strategy was the concern that other trade unions whose members were assigned to "the client's project" would insist upon the expiry of their agreements that like benefits be incorporated into any settlement for a new agreement. In order to forestall the consequences of "this bandwagon phenomena", the applicant was being asked to restrict its referrals to local tradesmen. In this regard, Mr. Robb, Labour Relations Manager on the project, indicated to the applicant's representatives that the respondent company was prepared to accept "outsiders" provided they were prepared to forego entitlement to the travel and board allowances. Nevertheless, the evidence is clear that the applicant was never asked nor had it ever offered "to waive" any rights entitling its members to these benefits under the collective agreement. Furthermore, at no time during its dealings with the applicant with respect to this dispute did the respondent company endeavour to by-pass the requirements of the hiring hall provisions by satisfying its manpower requirements from other sources. In the event that "locals" could not be dispatched to the job site, the respondent was simply prepared "to go short". There was some suggestion made by the respondent company in its letter dated November 7th that it was contemplating sub-contracting the work out to local contractors who would be compelled to absorb the costs of the board allowance but no concrete attempts were made to cause this to happen. As a result of these conversations with the representatives of the respondent company and the representatives of other employer contractors Mr. Doyle was of the impression that the objection was not to paying board allowance to the Ironworkers but rather the long term effect such payment would have on "Petrosar" having regard to the "me-tooism" of the other trades. In September, 1975 the applicant initiated a grievance under the terms of the subsisting collective agreement. That grievance was withdrawn upon learning that an arbitration tribunal mutually satisfactory to the parties could not be arranged until March or April 1976. Proceedings were later initiated by the applicant under section 112(a) of the Act.

8. During the course of his testimony Mr. Doyle described the routine operation of the applicant's hiring hall. It appears that a contractor, prior to a formal written requisition for tradesmen, would phone the local office and inquire about the manpower situation. The dispatcher would inform the contractor of that situation specifying the number of "locals" and "outsiders" that were available. The contractor is then put to the election of either accepting the tradesmen made available on the terms set out in the collective agreement or of merely going short. Upon acceptance by the contractor of the applicant's manpower situation each tradesmen is issued a referral slip that is presented to the contractor's representatives at the job site. In the alternative, should the contractor refuse to accept the tradesmen made available to him, then he merely does without the required manpower and the project is consequently delayed. There is no dispute that at any given time the contractor has abso-

lutely no control over the amount, type or source of qualified tradesmen that may be needed for its particular project. And Mr. Doyle agreed that management has the choice of turning down the tradesmen made available to the contractor upon learning in advance of the applicant's manpower situation.

9. Mr. William Robb in his capacity as Labour Relations Manager at the Petrosar project was advised by the project manager, Mr. T. Duncan, of the respondent company's policy with respect to hiring "outsiders". Firm instructions were given Mr. Gilbert Leckie, chief timekeeper responsible for processing new personnel, not to accept outside referrals. In processing new employees the Board was advised by Messrs. Robb and Leckie that upon presentation of a referral slip by an applicant for employment he would be asked to fill out a number of documents including a company application form, forms required by government regulation and a document acknowledging receipt of a copy of *The Construction Safety Act*, 1973. He would be issued "buttons and brass" entitling him to enter the job site and obtain the requisite tools. The new employee is also given a copy of the company rules and regulations and a work assignment slip indicating the foreman on the project he is to report to. The union steward is thereupon advised of the new employee and he escorts him to the phase of the project assigned on the slip. At this juncture Mr. Robb would consider that the employee has been hired.

10. Mr. Robb agreed that the Petrosar project was desperately short of journeymen ironworkers and welders. He further agreed that continuous requests had been of the applicant for tradesmen that were rejected by the respondent company when no local referrals were made available. Mr. Robb explained that the costs attendant upon paying board and travel allowance simply were not provided for in the respondent's bid for the job and as a result the company was not prepared to exceed its manpower budget. The evidence confirms that the manpower situation at the Petrosar project steadily deteriorated during the period under consideration. Meetings were convened between the applicant and respondent with respect to exploring "the feasibility of setting up a welder training facility for Ironworker apprentices ..." There is no question that the minutes of these meetings show that "Lummus was in the crunch" with respect to its manpower requirements. By the same token the minutes also indicate a steadfast posture by the applicant in refusing to abide by any measure for possible interim manpower relief that would compromise the entitlement of the membership to board and travel allowance under Article 2.2 of the agreement. In the result, the applicant at all material times was ready, willing and able to provide the respondent company with outside referrals and the respondent company at all material times was only prepared to accept local referrals. The evidence further establishes that the respondent company was simply prepared "to go short".

11. The culminating incident in this saga occurred on November 12th. Mr. Doyle accompanied five tradesmen (who had been issued referral slips) to the respondent's employment office adjacent to the Petrosar job site. The tradesmen were dispatched from the applicant's London sub-office. They presented themselves to the clerks employed by the respondent for processing new employees. The tradesmen were interrupted at various stages of the job processing exercise described in paragraph 9 herein by the arrival on the scene of Mr. Leckie. Indeed, Mr. Hank Strasser progressed the farthest in that the work assignment slip that had been issued to him was immediately revoked. Mr. Leckie directed the clerks to stop the processing of these applications for employment. He thereupon advised Mr. Robb of the event. Mr. Robb proceeded to the employment office and met privately with Mr.

Doyle and Mr. Jim Harrower. To the surprise of neither Mr. Doyle nor the five tradesmen their applications for employment were rejected by the respondent company. Or, in the alternative, the Board is compelled to the conclusion that at no material time were these tradesmen hired.

12. Because of the Board's determination that these five tradesmen were never employed by the respondent company, we reject any allegation that these persons were discharged, locked-out or otherwise terminated contrary to the provisions of the collective agreement.

13. The only issue seriously pressed by the applicant trade union is whether the respondent company violated Article 2.2 of the collective agreement in restricting its employment of manpower to tradesmen for whom no obligation to pay travel and board allowance would arise. In this regard counsel argues that the requisition orders sent by the respondent company to the applicant were without restriction. By operation of Article 2.2 of the collective agreement, it is mandatory that the applicant "...supply sufficient qualified Local Union members to meet the employer(s) requirements...". It therefore follows that upon meeting these requirements irrespective of the residence of the union member *an implied* obligation arises compelling the employer to hire. To hold otherwise would be to deny business efficacy to Article 2.2 of the collective agreement. The breach by the respondent of its obligation is confirmed by its representation that it would accept outside tradesmen provided they waive their entitlement to travel and board allowance. In reply counsel basically argues that nothing in the collective agreement expressly limits management's prerogative to hire save the requirement to exhaust the trade union's source of qualified tradesmen before satisfying its manpower requirements from other sources. Even in the latter instance the respondent is still obliged to direct any prospective employee to the trade Union for a referral slip. The respondent has a fundamental right to make an informed decision with respect to hiring employees at the price dictated by the collective agreement or to simply do without. Unless there is an express limitation to the exercise of management's discretion with respect to hiring "outsiders" then the Board is duty bound to deny the applicant's grievance.

14. In support of its argument that the Board ought to infer an implied obligation to hire upon meeting the respondent's requirements for manpower counsel referred the Board to the decision in *Re Polymer Corporation and Oil, Chemical and Atomic Workers, Local 16-14* (1961) 26 D.L.R. (2d) 609 (HC); aff'd (1961) 28 D.L.R. (2d) 81 (CA); aff'd (1962) 33 D.L.R. (2d) 124 (SCC). In that case the courts upheld the decision of the arbitration board awarding consequential relief from the effects of a wild-cat strike for which the trade union was held responsible. The learned arbitrator determined that there was inherent jurisdiction in the Board to award damages notwithstanding the absence of any clause in the collective agreement expressly empowering the Board to do so. The second case referred to the Board by counsel in support of its "implied obligation" submission was *The British Leyland Motors Canada Limited* case et al 74 CLLC ¶14, 216 (Div. Court). In that case the arbitrator determined that management was properly exercising its prerogative to reschedule hours but in so doing "acted contrary to the unspecified intent of the parties to the agreement". Because the effect of the rescheduling of hours created a new shift which overlapped into the next shift by more than fifty per cent, the arbitrator awarded a proportionate amount in overtime pay notwithstanding the trade union's failure to make any such claim. The court upheld the arbitrator's award indicating that the matter remitted was properly considered within the ambit of its jurisdiction.

15. In addressing ourselves to the cases referred to by counsel the Board must with respect find that they bear no relevance to the issues raised before us. In those cases the courts upheld the arbitrator's jurisdiction to arrive at results intended to maintain the efficacy of the terms of the collective agreement under consideration. It is something entirely different however to impute a term into a collective agreement that was not intended to be there at all. The simple issue before this Board is whether Article 2.2 of the subsisting collective agreement in anyway inhibits the respondent company's discretion to hire (or refuse to hire) outside referrals. In resolving this issue pursuant to our powers under section 112(a) of the Act, the Board is obliged to follow the pronouncements made in *Regina v Arthurs et al, ex parte Port Arthur Shipbuilding Company* 68 CLC ¶14,136 (SCC) at p. 588. In that case the arbitration board was found to have wrongly usurped a function of management in substituting the penalty of suspension in lieu of discharge once having found that the employer had proper cause to dismiss three of its employees. The court in defining the parameters of the Board's jurisdiction stated:

"A collective agreement is binding on employer and employees. These were not trivial breaches and the Board had no power to substitute its own judgement for that of management in the circumstances of this case. *If this kind of review is to be given to a Board under s. 3.03, it should be given in express terms, namely, that the management's authority to demote, suspend or discharge will be subject to full review by the Board of Arbitration.* Management would then understand what its position would be. But as the agreement is presently drawn, *the Board's power is limited to a determination whether management went beyond its authority in this case.* The question before them was, could an honest management, looking at the group of employees as a whole and at the interests of the company, have reached the conclusion that they did? In other words, did management go beyond its rights? There is only one answer to this question and the answer is "No". It was the Board that exceeded its authority in reviewing the decision of management by purporting to exercise a full appellate function." [emphasis added]

16. The Board in reviewing the evidence and the submission of the parties thereto can find no fetter in the agreement obliging management to hire outside referrals. Furthermore, we have not been persuaded that the Board ought to infer an implied obligation to hire in order to give business efficacy to Article 2.2 upon the applicant discharging its responsibility in meeting the employer's requirements for qualified workmen. In adopting the plain meaning of the relevant terms of the union security provisions contained in the agreement we have concluded that the benefits received and the obligations imposed are exactly what the parties bargained for. From the applicant's perspective the respondent employer in the event it hires must exhaust the union's rostrum of employees before it may complement its manpower requirements from other sources. In other words, negotiation by the parties of "the closed shop" makes union membership an obligatory term and condition of employment and to the extent an applicant for employment is not a member the employer's prerogative to hire is constrained. (See; *Syndicat National Catholique des Employes de Magasins de Quebec Inc. v. Pacquet Ltee.* (1959)) 18 D.L.R. (2d) 346 (SCC) at p. 353 (per Judson J.). And from the employer's perspective negotiation of "the union hiring hall provision" obliges the trade union having regard to the particular nature of the construction industry to maintain a pool of qualified members available for its projects. (See; *The Arthur Joseph Roberts* case

OLRB M.R. March [1974] 169 at p. 172). Within the ambit of the employer's obligation to hire union members and the trade union's duty to meet the employer's requirements for labour we can find no implied obligation to hire outside referrals. Indeed, the effect of the union's failure to meet the employer's requirements merely releases the employer from its obligation to initially look to the hiring hall for manpower. By operation of Article 2.3 the employer nonetheless remains obliged to send employees "from any other source" to the trade union for a referral slip. But the applicant in satisfying the employer's manpower requirements does not thereby curb the respondent company's discretion, in managing its enterprise, of saying "I prefer locals". In this regard, the Board agrees with counsel for the respondents in that the obligation to pay board and travel allowance only arises when an outside referral is presented and the employer accepts.

17. The Board is fortified in reaching this conclusion by Mr. Doyle's description of the operation of the applicant's hiring hall. He indicated that the employer is always given the choice upon learning of the applicant's manpower situation of paying the price or of going short. In the circumstances of this case it appears painfully evident, whatever the motive, that the respondent company preferred to do without the outside referrals made available by the applicant trade union. In doing so we find that the respondent has acted consistently within its discretion under Article 25 of the collective agreement and in conformity with its obligations to the applicant union under Article 2 in relying upon its hiring hall for its manpower requirements.

18. As a result of the foregoing, the applicant's grievance is denied.

ADDENDUM BY BOARD MEMBER E. BOYER:

1. While I agree with the decision I feel disposed to make this observation.

2. Lummus came close to endeavouring to alter the terms of the collective agreement if in fact it did not do so. Any such endeavour resides exclusively within the prerogative of the accredited association which is one of the two parties to the collective agreement. No company subject to such collective agreement has any right, except with the permission or delegated authority from the accredited association to make any overtures to amend any terms or conditions of the collective agreement.

0974-75-R Ontario Nurses' Association, (Applicant) v. **Westmount Hospital**, (Respondent).

BEFORE: Kevin M. Burkett, Vice-Chairman and Board Members E. Boyer and J.E.C. Robinson, Q.C.

APPEARANCES: *K.R. Lewis and L. Gosselin for the applicant; G.W. Hately, Q.C. for the respondent.*

DECISION OF KEVIN M. BURKETT AND E. BOYER: February 3, 1976

3. The parties were in disagreement as to the status of those employed in the classification of "Head Nurse" and accordingly Mr. S. Grizzle, Labour Relations Officer, was appointed to meet with the parties and examine the duties and responsibilities of those in the "Head Nurse" classification. He met with the parties on November 4, 1975 and submitted his report to the Board on December 10, 1975. The Board received the written submissions of the applicant with respect to the report of the officer on December 18, 1975 and convened a hearing on January 12, 1976 to hear the representations of the respondent in this regard.

5. The parties also agreed that the evidence of Jetske Terpstra is representative of all persons classified as "Head Nurse" and accordingly the Board will make its findings with respect to the classification of "Head Nurse" on the basis of her evidence.

6. Section 1(3) (b) of the Act reads:

"1.(3) Subject to section 80, for the purposes of this Act, no person shall be deemed to be an employee,

(b) who, in the opinion of the Board, exercises managerial functions or is employed in a confidential capacity in matters relating to labour relations."

7. This section of the Act is designed to facilitate the necessary arms-length relationship between the trade union on the one hand and the employer on the other by ensuring that persons who, "exercise managerial function or are employed in a confidential capacity in matters relating to labour relations," are not included within the bargaining unit which, if they were to be included, would cast them in a conflict of interest situation and could, over time, undermine the integrity of the collective bargaining process. The Board in applying section 1(3) (b) has regard to duties and responsibilities within the context of the contemporary worksetting and has taken notice of the bureaucratic structure of many organizations and the concomitant division and dilution of managerial authority, the existence of policy manuals and directives which circumscribe managerial authority, the distinction between technical or professional expertise and managerial authority and the existence of co-ordinative functions as distinct from managerial ones. A review of the Board's jurisprudence in this area reveals that in essence the Board will only exclude a person pursuant to section 1(3) (b) if he has "*effective control*" over an organization or over the employment relationship of those within the organization which is evidenced by "*independent decision making*" in this regard.

8. The Board has, on a number of occasions, dealt with the application of section 1(3) (b) to head nurses and has, in the course of its deliberations, developed certain insights which are helpful in applying the facts at hand. In the *Peterborough Civic Hospital* case, Board File No. 1970-72-R, the Board, in discussing a number of the functions of head nurses stated:

"Head nurses form a link or a liaison between management and other employees; they are in charge of a hospital floor and therefore assume many different functions. For example a head nurse is still involved in patient care. Because of her experience she may be called upon by other nurses prior to consulting the doctor. She may also be required to assist in the orientation of

nurses who are new to that particular floor. *Neither of these roles is a managerial function, but is merely the function of the training and experience of head nurses.* In addition, the head nurse carries out limited administrative duties. For example, she co-ordinates the policies of the hospital on her floor with respect to staffing. She sees that the scheduling and arranging of personnel is such that there is adequate coverage for patients. This scheduling is carried out in correspondence with a predetermined policy and the head nurse merely implementing policies decided at a higher level. *This implementation should not be confused with the decision-making Control function that goes hand in hand with management.*

Also, the head nurse forms a conduit between the general staff on her floor and management, or to put it another way she has a reporting function. In this function she is a liaison between management and other employees; she enables management to “keep its ear to the ground” and in touch with the daily operations and functions of the hospital, and at the same time she is a part of the vehicle for management to convey policies and decisions to other employees. Again, *this reporting function should not be confused with the exercise of managerial duties.*” (Emphasis is added.)

9. The Board in distinguishing between managerial criteria as applied to professional or semi-professional employees and as applied to others, stated in the *Essex Health Association* case (1970) OLRB November 824:

“Professional or semi-professional employees such as head nurses have a different relationship with management in matters falling within their professional competence and the performance of their professional duties than employees engaged in production in other industries. While the criteria applied to determine whether professional or semi-professional persons exercise managerial functions are basically the same as with persons concerned with production, in applying such criteria a distinction must be made between functions which are of a managerial nature and functions which are inherent in the exercise of such persons’ professional or technical skills. While nurses may give certain directions to others, e.g. orderlies, in the exercise of their professional skills, these directions are not dissimilar to the directions given by a journeyman to an apprentice in other crafts. Again, the reporting functions exercised by head nurses in this case may be likened to the reports one may expect from a journeyman concerning the progress of the apprentice.”

10. Finally, the Board has taken further notice of the requirement for co-ordination of patient care as administered by doctors, nurses, nursing assistants, orderlies, dieticians and therapists etc. and has stated in the *Toronto East General* case (1974) OLRB October 671:

“Hence there is a tremendous need to co-ordinate the professional and technical activities of nurses and to this end elaborate policy formulations are communicated to them, and a specialized group of co-ordinators has been created. This group of co-ordinators includes supervisors, head nurses, assistant head nurses, charge nurses and graduate nurses on occasion.

Whether any in this group of co-ordinators exercises managerial functions, as well as performing a co-ordinating function, is a question that must be decided on a case by case basis, and any inquiry must consider whether the inclusion of such people would have a serious effect on the labour relations of the particular institution before the Board.”

11. The Board finds, having regard to the evidence before it that those employees of the respondent employed in the classification of “Head Nurse” do not exercise managerial functions and are not employed in a confidential capacity in matters relating to labour relations within the meaning of section 1(3) (b) of the Act.

12. The evidence discloses that Mrs. Terpstra when on duty assigns and delegates work and monitors patient care on Wing “A” in accord with doctors’ orders and hospital policy. She is responsible for the maintenance of patient charts, the filing of supply lists, the recording of lab reports and the drawing up of equipment requisitions. She has special responsibilities on Wing “A” with respect to intravenous therapy, family counselling and treatment referral. None of these activities or responsibilities, however, require that she be excluded from the bargaining unit pursuant to section 1(3) (b) of the Labour Relations Act. She is replaced by an R.N. when off duty.

13. Mrs. Terpstra does not have the authority to hire or fire nor has she ever been present when a person has been hired or fired. She does not have the authority to grant time off or to set vacation schedules or to schedule overtime other than in certain prescribed situations. She does not determine the shift schedules or the shift complements. Although she maintains the time records for the employees on Wing “A” these are kept for the information and use of the Director of Nursing. Although she makes oral evaluations, and sometimes on request written ones, these have never to her knowledge deprived an employee of an increase in pay or resulted in a decrease in pay. Mrs. Terpstra does not have access to individual personnel records.

14. The evidence of Mrs. Terpstra indicates that she has the authority to verbally reprimand and has on at least two occasions had employees transferred from Wing “A”. Both Kathleen Dow and Jannette Schaaf were transferred from this Wing on the recommendation of Mrs. Terpstra. The authority to discipline employees is a managerial function which weighs heavily in making a determination under section 1(3) (b). The Board, therefore, must look carefully at all of the evidence in order to determine if Mrs. Terpstra has a power of discipline which would place her in a fundamental conflict of interest and require that she be excluded pursuant to section 1(3) (b).

15. The Board has considered the following: *Firstly*, it was Mrs. Terpstra’s evidence that she has never recommended “the extent to which an employee should be disciplined.” This is determined by the Director of Nursing in conjunction with others. *Secondly*, and more importantly from a labour relations point of view, she has never disciplined an employee in writing. It is the disciplinary letter or written warning which attaches to the personnel record of an employee and which may be the subject of a grievance or which may be introduced as evidence in an arbitration hearing in support of a more severe penalty. Mrs. Terpstra has never had occasion to discipline an employee in writing. *Thirdly*, Mrs. Terpstra does not participate in the grievance procedure and has never handled a complaint of an employee brought about by a management action. *Fourthly*, if her instructions to her eve-

ning or night shift replacements are not followed she "would take this up with Miss Wersda." This evidence strongly indicates that the real authority and power of discipline rests with Miss Wersda. *Fifthly*, with respect to the transfer of Kathleen Dow and Jannette Schaaf, Mrs. Terpstra testified that in 1969 as an R.N. prior to becoming a head nurse she recommended a nurses' aide as unsuitable and the recommendation resulted in the termination of the employee. The "professional competence" of nurses as referred to in the *Essex Health Association*, case, *supra* and the "internalized" supervisory function referred to in the *Toronto East General* case, *supra* suggest, and certainly the 1969 action of Mrs. Terpstra supports, that nurses will, on the basis of their professional integrity, make recommendations with respect to the competence of other staff members and that these recommendations may result in discipline, transfer or even termination. It is not, however, the power of recommendation which results in the application of section 1(3)(b). If that were the case registered nurses would not be permitted to bargain collectively. Rather it is the power to act on the recommendation which is the managerial function. In the case at hand it was Miss Wersda, the Nursing Supervisor, who exercised the managerial function of acting on these recommendations.

16. The Board reiterates that having reviewed all of the evidence and examined the duties and responsibilities of Mrs. Terpstra that it finds that she does not exercise managerial function within the meaning of section 1(3)(b).

17. The Board has stated that an exclusion based on "confidential capacity" must follow from –

"...a regular material involvement in matters relating to Labour Relations which are confidential because their disclosure would adversely affect the interest of the employer ..."

(See the *Falconbridge* case (1966) OLRB rep. September at page 379.

The legislation is designed to prevent a conflict of interest which would result from the inclusion within the bargaining unit of a person who in the normal course of his duties has access to information relating to the labour relations function of the employer and which, if disclosed, would prejudice the employer.

18. Mrs. Terpstra does not become involved in policy or budget determinations nor does she have a material involvement in the personnel or labour relations functions. Although she attends regular monthly management meetings the evidence discloses that patient care and hospital policies are the prime topics of discussion with some verbal evaluation of staff and consideration of working conditions. There is no evidence to suggest that decisions are taken at these meetings. Mrs. Terpstra is not in the course of her duties made privy to confidential information which would place her in a conflict of interest and which, if disclosed, would adversely affect the bargaining position of the respondent. Mrs. Terpstra is not employed in a confidential capacity in matters relating to labour relations within the meaning of section 1(3)(b).

19. The Board finds that all registered and graduate nurses employed in a nursing capacity at Westmount Hospital, Thunder Bay, save and except supervisors, persons above the rank of supervisor, persons covered by subsisting collective agreements and persons reg-

ularly employed for not more than 24 hours per week constitute a unit of employees of the respondent appropriate for collective bargaining.

20. The Board is satisfied on the basis of all the evidence before it that more than fifty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant on September 30, 1975, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

21. A certificate will issue to the applicant.

22. The Board also finds that all registered and graduate nurses regularly employed in a nursing capacity at Westmount Hospital, Thunder Bay, for not more than 24 hours per week save and except supervisors and those above the rank of supervisor and persons covered by subsisting collective agreements constitute a unit of employees of the respondent appropriate for collective bargaining.

23. The Board is satisfied on the basis of all the evidence before it that more than fifty-five per cent of the employees of the respondent in this bargaining unit, at the time the application was made, were members of the applicant on September 30, 1975, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

24. A certificate will issue to the applicant.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.

I regret that I am unable to agree with the decision of the majority wherein it includes the classification of "head nurse" within the bargaining unit.

I may say at the outset, that in the cases heard by the Board over the recent past, the Ontario Nurses' Association has invariably agreed with respective respondents that "head nurses" exercise managerial functions within the meaning of section 1(3)(b) of the Labour Relations Act.

I am aware that such determination must, of necessity, be considered on a case by case basis. I trust that by acknowledging agreements to the exclusion of this category, the applicant is basing such agreements upon the duties and responsibilities of the persons engaged in such classification rather than upon the extent of its organization of such classification.

The posture of hospitals generally is that the classification of head nurse should be excluded in that such persons exercise managerial functions within the provisions of the Act.

It follows, therefore, that for the most part the only jurisprudence by the Board in this area is where the union has not agreed with the normal posture adopted by hospitals in general, and the passages included in the majority decision reflect such jurisprudence.

Similarly, it may be said that administrators setting up the managerial hierarchy in any hospital did not do so on the basis of a consideration of The Labour Relations Act, nor the jurisprudence thereon; their primary concern was that of patient care.

In the instant case, it is clear from the report of the Labour Relations Officer that the representative head nurse was in charge of the ward on a 24 hour basis, that she has been called at home when serious problems arise, and that over the day she has 21 full-time and 10 part-time employees under her supervision.

She is not paid for her overtime duties and has a private office at her disposal as opposed to the nurses who work under her direction.

She assigns work to staff members, delegates duties to the staff, inspects the work of the staff to see that it is properly done, evaluates people under her direction, reassigns staff without consultation, co-ordinates her own staff meetings, verbally reprimands employees with authority to do so in writing, recommends promotion, keeps track of employees' time records. In addition she may recommend discharge and she attends head nurses' and supervisors' meetings where the staff is discussed.

That my colleagues have placed different nuances upon the evidence than do I, is evident in their decision.

In my opinion, however, the three persons engaged in the classification of head nurse exercise managerial functions within the provisions of section 1(3)(b) of the Labour Relations Act and I would so find.

In closing, I may say that I can only speculate upon the conclusion of the Board concerning this classification if one of the head nurses had originated, prepared and circulated a petition against the certification of the applicant trade union.

1512-75-R Local 1590, International Brotherhood of Electrical Workers, (Applicant) v. **Bernardin of Canada Limited**, (Respondent).

BEFORE: Frank V. Boscarior, Vice-Chairman, and Board Members J. D. Bell and E. Boyer.

APPEARANCES: *J. A. King and M. E. Fisher for the applicant; C. R. Osler, Q.C., H. B. Perkins, F. Wilkin and L. Binder for the respondent.*

DECISION OF FRANK V. BOSCARIOR, VICE-CHAIRMAN, AND BOARD MEMBER E. BOYER. February 23, 1976.

1. Following the filing of this application, on January 5, 1976, requesting the taking of a pre-hearing representation vote, the Board pursuant to its decision dated January 16, 1976, directed that the ballot box be sealed following the taking of the pre-hearing representation vote in this matter pending the representations of the parties concerning the time-

liness of this application and the allegations of fraud as raised in the respondent's letter dated January 9, 1976.

2. The relevant background, we find is as follows: On September 16, 1975, the applicant filed an application for certification (Board File No. 0936-75-R) for the same group of employees of the respondent as in the instant application before us. Following the hearing of that matter on October 6, 1975, the Board for the reasons as set out in its decision dated October 14, 1975, dismissed the application. In reaching this conclusion, the Board, in paragraph #4 of the said decision, characterized the initial problem confronting the applicant as follows:

"At the hearing in this matter the Board raised for representation by the parties the conclusion that should be drawn for purposes of section 7(1) of the Act as a result of the nature of the membership cards filed by the applicant in support of its claim for bargaining rights. The application is filed under the name of "Local 1590, International Brotherhood of Electrical Workers". The membership cards indicate that an applicant for membership is applying "for membership in International Brotherhood of Electrical Workers (AFL-CIO-CLC)." The spaces reserved for insertion of "a local no." were left blank on each of the 37 application for membership cards filed in support of the application. In thirty-two instances it was indicated by a separate document stapled to the application for membership card that the applicant paid a dollar in the way of initiation fees. These receipts show "Local 1590" on their face and are signed by a collector. The issue before the Board is whether the documentary evidence of membership submitted herein indicates that the signatories thereto have expressed a desire to be "members" of the applicant trade union for purposes of the count."

3. On December 15, 1975, the applicant filed a second application (Board File No. 1437-75-R) for the same group of employees of the respondent. Subsequent to the hearing of this application on December 29, 1975, the applicant sought leave of the Board to withdraw the application. Following its usual practice, the Board, pursuant to its decision dated January 2, 1976, dismissed the application. It would appear that during the course of these proceedings, the respondent requested that the Board impose a bar of six months upon the applicant with respect to its filing any further application in respect of the employees of the respondent. By letter dated January 2, 1976, the respondent requested that the Board reconsider its ruling in this regard and for the reasons as set out in the decision of the Board in this matter dated January 26, 1976, this request was denied.

4. On January 5, 1976, the applicant filed the instant application, and again, as in the previous two applications, on behalf of the same group of employees of the respondent. For the reasons as explained at the hearing of the instant application before us on February 5, 1975, the respondent did not pursue its position with respect to timeliness. Counsel for the respondent did, however, indicate that he wished to continue with his second allegation as filed with the Board in his letter dated January 9, 1975, and which provided as follows:

"The applicant (e.g. the respondent in the instant case) further alleged that the evidence of membership filed by the applicant in the ap-

plication for certification dated January 5, 1976 is fraudulent in that some or all of the applications for membership in Local 1590 filed are one and the same as the applications for membership in the International Union filed in respect of application of September 16, 1975, dismissed by the board on October 4, 1975.

In support of the allegation, the respondent submits that:

1. Some or all of the applications for membership are dated on or prior to September 24, 1975 (terminal date for the application of September 16, 1975).
2. The number of the local, namely, 1590 was inserted at a date later than September 24, 1975 without proper authorization by the person or persons applying for membership.
3. On or about December 29, 1976 at or about the time of the hearing of the application dated December 15, 1975, Morley Fisher uttered words to the effect that he had just filled in the numbers on the cards and resubmitted them."

5. The testimony of Mr. Fisher, the applicant's business agent, is to the effect that shortly after being informed of the Board's decision to disallow the membership cards as submitted in the first application (Board File No. 0936-75-R), he so advised the four employees who had been active on the committee during the applicant's organizing campaign. Mr. Fisher further testified that it was at this time that he had been "assured" by these four employees that all of the employees who had heretofore signed membership cards were clearly aware that the body they were joining was the applicant trade union. Upon being satisfied that there existed no confusion in the minds of all of the employees in this regard, Mr. Fisher then inserted the Local Union number* in the space appearing on the reverse side of the application card, the "portion" of which is reproduced herein as follows:

PORTION BELOW TO BE FILLED IN BY L.U. SECRETARY

Local Union No. 1590*	Date of Initiation	Type of Membership	"A" "BA"	Card No.
--------------------------	--------------------	-----------------------	-------------	----------

6. In this respect, Mr. Fisher stated that his position as "business manager" authorized him to act as the "L.U. Secretary" in inserting the entries *at the time the application for membership is received*. It is clear however that in the instant case, he made these notations some six months after the employees had signed membership cards. Mr. Fisher further drew to our attention the fact that the receipt portion stapled to the application (see paragraph #2 herein) nevertheless did disclose the local union number on its face. Accordingly, he suggested that the employees knew at the relevant time that they were joining the local union, and that, in the circumstances, only a "technical irregularity" within the meaning of Section 103 of the Act, had been committed. In this regard, Mr. Fisher further asserted that the recent decision of the Board dated October 20, 1975, in the **Wallaceburg Hydro Electric System** case, [1975] OLRB Rep. 783, would support his position that the membership cards as filed in the applicant's initial application (Board File No. 0936-75-R) were erroneously

rejected by the Board in its decision dated October 14, 1975, in the **Bernardin of Canada Limited** case [1975] OLRB Rep. 737. As regards these latter representations, the Board at the hearing of this matter on February 5, 1976, reiterated to Mr. Fisher, its consistent practice in refusing to permit one division of the Board to reconsider or to entertain an appeal from the decision arrived at by another division of the Board.

7. Having carefully reviewed the evidence as adduced and taking into account the representations of the parties with respect thereto, we are not prepared, having regard to the particular circumstances, to accept the membership evidence submitted in support of this application. In our opinion, Mr. Fisher, in taking it upon himself to subsequently "amend" the cards in the face of their initial rejection by the Board in Board File No. 0936-75-R, acted erroneously in the face of the Board's admonition which was expressed in the concluding statement of Paragraph #6 of its decision dated October 14, 1975, in the following terms:

"The most appropriate measure for avoiding future predicaments of this nature is for the Board to encourage application trade unions to exercise some care in instructing their representatives of the Board's requirements with respect to submitting acceptable documentary evidence of membership."

In so finding, however, we would not go so far as to impute (and as was conceded by the respondent) any fraudulent motivations on the part of Mr. Fisher to deliberately mislead this Board.

8. In the result, the Board is not satisfied that the applicant has submitted valid evidence of membership on behalf of at least thirty-five per cent of the employees encompassed in the voting constituency pursuant to the provisions of Section 8 (2) of the Act and accordingly this application is dismissed.

9. The respondent in these proceedings has further requested that the Board now impose a bar upon a further application being filed with the Board in this respect. As noted in Paragraph #3 herein, such a request was previously entertained by the Board in Board File No. 1437-75-R. In denying the request at that time, the Board summarized the relevant jurisprudence at paragraph #3 of its decision dated January 26, 1976, as follows:

"In the *Patchoque Plymouth Hawkesbury Mills* case (1972) OLRB rep. July 747 the Board briefly set out in paragraph 7 those types of situations which have led the Board to exercise its discretion under section 92(2)(i) and impose a bar for a specific period of time on subsequent certification applications. The third type of situation referred to in the **Patchoque** case supra, is analogous to the case at hand and pertains to those instances where the Board is asked to exercise its discretion following the dismissal of a series of applications over a short period of time which cover essentially the same employees. In this regard the **Patchoque** case supra refers to the **J. W. Crooks Company** case (1972) OLRB Rep. February 126 wherein the Board imposed a six month bar following the dismissal of an application which was the fourth unsuccessful application brought within a period of little more

than three months. In the **Ken Bunyak's Bus Lines** case, June 20, 1974, Board File No. 5714-74-R, however, the Board found that a second unsuccessful application within a short period of time did **not** warrant the imposition of a bar to a third application. Although each case must be decided on its particular merits, these cases establish parameters which in the absence of special circumstances are persuasive."

10. Having regard to all of the circumstances in the instant case and taking into account the principles as above cited, we are not prepared to impose a bar to the filing of a further application.

11. The Registrar is directed to unseal the ballot box and destroy the ballots cast in the pre-hearing representation vote in this matter following the expiration of 30 days from the date of this decision unless a statement requesting that the ballots should not be destroyed is received by the Board from one of the parties before the expiration of such 30 day period.

DECISION OF J. D. BELL.

In the circumstances of this case, I would direct that the applicant trade union be barred from making a fourth application for certification for a period of at least six months.

0660-75-R Retail Clerks International Association, (Applicant) v. **G. Tamblyn Limited**, (Respondent).

DECISION OF BOARD MEMBER HARRY SIMON: January 29, 1976

1. I would certify a unit of pharmacy managers, assistant pharmacy managers and pharmacy interns. I base my decision on the evidence of the pharmacy manager who has been with the company for more than 20 years and has had 15 years experience under the supervision of the pharmacy supervisor who travels from store to store. There is also a front shop supervisor who acts as a general store manager.

2. His main responsibilities are the ordering of Drugs, filling of prescriptions and in general looking after customers. He has supervision over student pharmacist. He does not grant any time off to anyone. He does not hire or fire. Occasionally he would interview someone for a job in the pharmacy department, but he could not hire anyone without approval of front store manager or the general office.

3. If he finds that he needs additional help in the Dispensary he can request the pharmacy supervisor to supply such help. He does not grant any wage increases nor does he recommend any increases. The Supervisor has never discussed with him the matter of granting wage increases to any of the staff in the Dispensary. He does not attend any meetings with management dealing with Labour Relations.

4. When he does order drugs it is mainly from their own company, price lists for drugs are set by the company. The general store manager looks after the balancing of his books as well as after cash reports and bank deposits.

5. The hours for the store are determined by the Head office. The head office also decides the hours the employees are to work. All advertising for the store including the pharmacy is done by the Head office.

6. He works in close co-operation with the assistant pharmacy manager in his store. They both have similar duties, the only basic difference in their duties is that he has to sign for narcotics which is a requirement under the Pharmacy Act.

7. The assistant pharmacy manager interviewed by the Examiner has been with the company 2 years. In her evidence she agreed in the main with the evidence given by the pharmacy manager regarding their duties and responsibilities with one exception, she stated that she had never hired or fired anyone but that a couple of weeks ago the supervisor told her she could hire and fire. It is apparent that this authority was given to her after the application for certification was made by the union and therefore in my view should not be given any weight by the Board.

8. I find that the responsibilities of a pharmacy manager and assistant pharmacy manager are similar to the responsibilities of a Department Head or assistant Department Head in a supermarket or other retail establishment which the Board has in the past found to be appropriate for Collective Bargaining.

9. The Board has certified various para-medical and professional groups and I see no reason why pharmacists should be denied the same rights.

Editor's Note: The decision of the Majority may be found in [1975] OLRB Rep. December.

0763-75-R Teamsters, Chauffeurs, Warehousemen and Helpers Local 91 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, (Applicant) v. **Hoffman Concrete Products Limited**, (Respondent) v. Group of Employees, (Objectors).

BEFORE: D. H. Kates, Vice-Chairman, and Board Members O. Hodges and F. W. Murray.

APPEARANCES: I. J. Thomson for the applicant; J. A. Currie for the respondent; L. Alksnis and S. Hodgson for the objectors.

DECISION OF THE BOARD: February 2, 1976

1. This is an application filed by counsel for the group of objecting employees requesting reconsideration of the Board's certificate dated September 2, 1975 on the grounds that the Board did not give any consideration to the statement of desire filed in opposition

to the application. The background circumstances giving rise to this request for reconsideration ought to be briefly reviewed. The application for certification was filed on August 15, 1975 and the Registrar in the ordinary course notified the parties once having set the terminal date and the hearing date for August 25 and September 2 respectively. The hearing proceeded as scheduled at which time the Board entertained the submissions of the applicant trade union and the respondent employer with respect to all matters pertinent to the disposition of the application. No appearance was filed by Mr. Hodgson or any other employee claiming to represent interested persons opposing the applicant's claim for bargaining rights. A certificate granting bargaining rights issued on the same day. On September 3, Mr. J. A. Currie, the representative of the employer wrote the Board indicating that he "has been requested by the employees objecting to the union, to have you clarify the Board's decision of September 2 on the above file." The contents of the communication indicate the names and classifications of all the employees included on Schedule "A" filed by the respondent in reply to the application. Beside each name is designated whether or not the employees "signed against" the trade union. It appears that a statement of desire was indeed filed with the Board expressing opposition to the application that arrived at the Board's offices on August 27, 1975. The envelope containing the petition had been stamped in Pembroke on August 26th. The Registrar in accordance with the policy instruction given him by the Board returned the statement of desire to the sender advising that it was untimely for having failed to be sent by registered mail on or before the terminal date. No reference was made to this state of affairs in the respondent's request for reconsideration on September 3rd. The Board denied the respondent its request for reconsideration for the reasons set out in its decision dated September 17th.

2. On December 23, 1975 counsel filed the instant request for reconsideration and attached thereto was a registration receipt indicating on its face that the petition had, indeed, been mailed on August 25, 1975. The Board complied with counsel's request "that we review the matter and perhaps give my clients an opportunity to state their case".

3. At the hearing scheduled for January 21, 1976 the Board entertained the evidence of Mr. Hodgson who explained that he had sent the petition by registered mail at 5:00 p.m. on August 25, 1975. He had mailed the document at a variety store that apparently was licensed to provide post office services. He received the receipt at the time of posting. Apparently the envelope was not stamped until the next day. When Mr. Hodgson received the Registrar's letter explaining the reason for the rejection of his petition he felt it was no use pursuing the matter further. He refrained from attending the Board's hearing on September 2nd. The day after the hearing he approached Mr. Currie, the respondent's office manager (who represented the respondent throughout these proceedings) and inquired about the outcome of the previous day's proceedings. At that time he informed Mr. Currie of the disposition of the statement. Mr. Currie thereupon wrote the Board for the reason set forth in paragraph 1 herein.

4. At the hearing the Board determined that the employees ought not be prejudiced by the representation of the registration stamp indicated on the envelope containing the petition. In the face of the registered receipt slip indicating that the petition had indeed been mailed on August 25th, we were satisfied that we ought to consider the validity of the statement of desire filed by Mr. Hodgson. We did express our concern to Mr. Hodgson with respect to his failure to attend the hearing originally scheduled for September 2, 1975 upon being notified by the Registrar of the Board's policy in these matters. In our view a great

deal of turmoil that appears to have ensued may have been avoided had he exercised some aggressiveness in defending the position he purports to represent. Nevertheless, in light of Mr. Hodgson's obvious ignorance of the technical rules of our procedure and in conformity with our own concerns of extending ample opportunity to interested persons to participate in our proceedings, we resolved to inquire into the origination, preparation and circulation of the petition.

5. Mr. Hodgson was the only witness called to adduce evidence in support of the petition. He explained that in early August he was approached by a union representative to sign a card. He refused. He resolved at that time to take some measure to oppose the applicant's attempts to gain bargaining rights. Before the application was filed (or at best before *The Notice to Employees* (Form 5) was posted) he met with a number of employees in his office. Amongst these employees was Kevin Hoffman, the son of one of the respondent's owners. A discussion followed with respect to whether Mr. Hoffman ought to participate in formulating strategy to oppose the trade union. It was decided that Mr. Hoffman, notwithstanding his relationship, was an employee like everyone else who should not be deprived of his rights. It was later established through Mr. Currie, the respondent's office manager, that Kevin Hoffman was responsible for signing employees' pay cheques. This function was performed as a matter of convenience in that Messrs. Donald and Reginald Hoffman, the owners, could not always be located for that purpose. We were assured by Mr. Currie that Mr. Hoffman exercised no other function that could be construed as being managerial in character. Mr. Hoffman is classified on the employer's schedule filed in reply to the application as a "management trainee".

6. After the Board's *Notice To Employees Of Application For Certification* (Form 5) Mr. Hodgson drafted the document expressing employee opposition to representation by the applicant trade union. He arranged for his wife to type the text. Then he proceeded to Mr. Kevin Hoffman's residence and secured his signature to the petition below his own. Mr. Hodgson explained that he had approached a friend for advice with respect to the Board's procedures. He was advised that the signatures should not be secured during working hours or on the company's premises. Therefore he would either phone an employee at his home and if encouraged by the conversation would arrange an appointment for obtaining the signature. Or he would approach an employee on his arrival or departure in the parking lot before or after work. One example of the former was the securing of the signature of Kim Hoffman who is the daughter of Donald Hoffman and the sister of Kevin. Miss Hoffman is a student who worked on a part time basis in the office of the respondent and was excluded from the bargaining unit by the parties' agreement. Miss Hoffman's signature was obtained at the home of her father. Another signature secured by Mr. Hodgson was "the fleet supervisor" who was also excluded by the parties from the bargaining unit because of the exercise of managerial functions under section 1(3)(b) of the Act. Upon completing his campaign to obtain signatures to the petition Mr. Hodgson thereupon arranged for an employee in the respondent's office to type the envelope addressing the petition to the Board and sent the document by registered mail as aforesaid in the late afternoon of August 25, 1975.

7. The issue before this Board is whether the petition expressing opposition to representation by the applicant trade union is a voluntary expression of employees' desires. More particularly, of those employees who signed membership cards in support of the applicant's campaign and who later signed the petition, was their change of mind bereft of any management influence? In resolving this question the Board must be satisfied that the origination,

preparation and circulation of the statement of desire was free of employer interference. In the circumstances described to us, we have concluded that the hand of management is discernible at every phase of the petition's evolution including the initiation of these proceedings in reconsideration of our decision certifying the applicant trade union.

8. The evidence that Kevin Hoffman signed the petition is not in itself sufficient to cast doubt on the petition even assuming him to be a regular employee like everyone else. The misfortune is that at the planning stage of adopting strategy to frustrate the applicant's organizational campaign, employees in attendance at the meeting appreciated the conflict that might ensue to their prejudice. Mr. Hoffman ought to have either offered to disqualify himself from the meeting or he should have been invited to leave. Instead he participated in the meeting where the origination of the petition was spawned. Of course, in any event, it strains our sense of credulity to accept that Mr. Hoffman, as a management trainee with authority to sign employee payroll cheques, was merely "a regular employee" like everyone else.

9. The evidence of Mr. Hodgson was that he was advised by a friend to keep away from the company premises while securing signatures, yet, he proceeded to the residence of Mr. Donald Hoffman, one of the respondent's partners, in order to secure his daughter's signature. After securing that signature the signature of the fleet supervisor was obtained. Between the signatures of Kevin Hoffman and the fleet supervisor the signatures of "regular employees" were obtained. We have misgivings in concluding that those signatures would not indicate employees' voluntary desires. Surely employees who have grown accustomed to seeing the name of Kevin Hoffman on their pay cheques would likely be influenced by his name appearing along with Mr. Hodgson's just below the preamble of a petition opposing the applicant's organizational campaign. (See; *The Piggott Motors (1961) Limited* case 61 CLLC ¶16,264 at p.1130).

10. As a result, the Board affirms its original decision certifying the applicant trade union as exclusive bargaining agent for employees described in the appropriate unit. In doing so we affirm our finding that more than fifty-five per cent of those employees desire to be represented by the applicant trade union as of the date the application was filed. This application for reconsideration is therefore dismissed.

1627-75-M United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union 46, (Applicant) v. **F. Happe Plumbing & Heating Limited**, (Respondent).

BEFORE: R.A. Furness, Vice-Chairman, and Board Members A. Gribben and N.B. Satterfield.

APPEARANCES: *Henry M. Pollit and Hugh Loveday appearing for the applicant; Michael G. Horan appearing for the respondent.*

DECISION OF THE BOARD: February 20, 1976

1. The applicant has referred to the Board a grievance concerning the interpretation, application, administration or alleged violation of a collective agreement for final and binding determination pursuant to section 112a of The Labour Relations Act.

2. The applicant has alleged that:

The [respondent] is bound by a Collective Agreement between Local 46 and Mechanical Contractors Association of Toronto (Commercial Agreement) and Local 46 and The Metropolitan Plumbing and Heating Contractors Association, A Division of The Mechanical Contractors Association Toronto (Residential Agreement), each dated July 7th, 1975.

Pursuant to Article 14 of the Commercial Agreement, and Article 23 of the Residential Agreement, and Section 112a of the Labour Relations Act, the Union grieves on its own behalf and on behalf of its Members who are or have been employees of the Company that the [respondent] has violated the above referred Agreements, and continues to violate the current Agreements in that:

The [respondent] has failed to pay all of the amounts required to be paid, for or on behalf of its past and present employees who are represented by Local 46, pursuant to the above referred to Collective Agreements, since in or about the month of August, 1975, and without limiting the generality of the foregoing, the [respondent] has failed to pay the sums required to be paid pursuant to the following Articles of the Collective Agreements:

(a) COMMERCIAL AGREEMENT

Welfare Contributions pursuant to Article 38, Pension Contributions pursuant to Article 39, Supplementary Unemployment Benefit Contributions pursuant to Article 40, Union Training Fund Contributions pursuant to Article 41, Association Industry Fund Contributions pursuant to Article 42.

(b) RESIDENTIAL AGREEMENT

Welfare Plan Contributions pursuant to Article 10, Pension Plan Contributions pursuant to Article 11, Association Industry Fund Contributions pursuant to Article 12, Local Union 46 Training Fund Contributions pursuant to Article 13, Supplementary Unemployment Benefit Contributions pursuant to Article 14.

The [respondent] has failed to remit and/or deduct all Union Dues and Pension Fund Contributions as required by Article 43 of the Commercial Agreement, and Dues Check-Off and Union Industry Fund Contributions as required by Article 18 of the residential agreement, since in or about the month of August, 1975.

The [respondent] has failed to remit the above payments and the list of names as required by Article 45 of the Commercial Agreement and Article 16 of the Residential Agreement.

The [respondent] has, since the commencement of the above referred to Collective Agreements, made such remittances as have been made, and has sent such lists of men as it has sent, in excess of one month after such remittances and lists were required to be sent, pursuant to the Collective Agreements.

3. The applicant claims the following relief:

(i) An Order that the Company produce accurate lists of names for all relevant employees from and including August, 1975, as required by the above referred to Collective Agreements.

(ii) An Order that the Company pay forthwith all moneys required to be paid pursuant to the said Collective Agreements, and in particular, but without limiting the generality of the foregoing, the amounts required to be paid pursuant to the above referred to Articles of the Collective Agreements.

(iii) An Order that the Company pay all sums by way of damages or penalties required to be paid pursuant to Article 45 of the Commercial Agreement and Article 17 of the Residential Agreement.

(iv) An Order that the Company deduct and/or remit all future payments and lists of names as required under the current Collective Agreements, and that the Company observe, in future, all terms of the said Collective Agreements.

(v) Such further and other relief as Counsel may advise and the Board permit.

4. At the hearing reference was made only to the collective agreement respecting the residential division. The respondent admitted that it was in default regarding payments to the applicant which are past due with respect to the applicant's health and welfare, pension and supplementary unemployment benefit plans. The respondent informed the Board that it was two months in arrears regarding remittances and invoices supporting the remittances. The respondent stated that it had encountered difficulties in its business and that the invoices had been prepared in its office but that it did not have any funds to support the invoices. The respondent claimed that the amount owing for the period from November 3, 1975, to November 28, 1975, is \$3,469.97 and that the amount owing for the period from December 1, 1975, to December 26, 1975, is \$2,231.74. The applicant did not contest these amounts and acknowledged that the respondent had filed the required statements or invoices at the commencement of the hearing. However, the applicant invoked the provisions of article 17.1 of the collective agreement respecting the residential division. Article 17.1 deals with default of payment by an employer and provides for payment on default by an employer, as liquidated damages (and not as a penalty), an amount equal to ten per cent of the arrears for each month of part thereof during which such default continues.

5. The respondent opposed the application of article 17.1 of the collective agreement and stressed that interest will accrue on the amount in arrears from the date this decision is filed in the office of the Registrar of the Supreme Court of Ontario.

6. It was agreed by the parties that the respondent has on various occasions in the past been late in filing the invoices and payments which are required under the collective agreement. The parties did not refer to article 24.6 of the collective agreement which provides:

The Board of Arbitration shall not have any power to alter or change any of the provisions of this Agreement or to substitute any new provisions for any existing provisions, nor to give any decision inconsistent with the terms and provisions of this Agreement.

7. However, the applicant argued that the Board has no discretion to alter the terms of article 17.1 of the collective agreement. The Board is in agreement with this position by the applicant.

8. Having regard to the mandatory provisions of articles 17.1 and 24.6 of the collective agreement and to the defaults of the respondent under the collective agreement in the past, the Board applies the provisions of article 17.1 of the collective agreement.

9. The Board therefore directs the respondent to pay forthwith in accordance with the collective agreement the sums of \$3,469.97 (which is owing with respect to the period from November 3, 1975, to November 28, 1975) and \$2,231.74 (which is owing with respect to the period from December 1, 1975, to December 26, 1975) together with liquidated damages to be calculated in accordance with the provisions of article 17.1 of the collective agreement as of the date of this decision. The parties did not make any representations on the precise amount which is payable by the respondent pursuant to this decision and the Board retains jurisdiction to determine the precise amount which is payable by the respondent if either party requests the Board to make such a determination.

1026-75-R The Civil Service Association of Ontario, (Applicant) v. **Stratford General Hospital**, (Respondent) v. Association of Allied Health Professionals: Ontario, (Intervener) v. Group of Employees, (Objectors).

BEFORE: George W. Adams, Vice-Chairman, and Board Members O. Hodges and J.E.C. Robinson, Q.C.

APPEARANCES: *Chris G. Paliare and Paula Knopf for the applicant; E.L. Stringer, Q.C., R. Cameron and T. Hogan for the respondent; Michael Gordon, Elsie Duval and Margaret Fielding for the intervener; D.K. Gray and G. Murray for the Canadian Society of Hospital Pharmacists, Ontario Branch; no one appearing for the objectors.*

DECISION OF THE BOARD: February 17, 1976

1. This is an application for certification and the particular issue to which this opinion pertains is the status of the "Canadian Society of Hospital Pharmacists, Ontario Branch" to intervene in the proceedings.

2. This application and a partnering application - application 1070-75-R have been filed with respect to employees who, for want of a more accurate "shorthand" description are employed in a paramedical capacity. There is no dispute that the application will affect persons employed by the respondent as pharmacists although the Board is given to understand that only one person is so employed and the respondent has objected to her inclusion in any bargaining unit on the basis of section 1(3)(b).

3. By letter dated December 4, 1975, Douglas K. Gray, a lawyer, advised the Board that he would be appearing on behalf of two clients. The letter read:

Dear Sirs:

Re: C.S.A.O. and Stratford General
Hospital, Association of Allied
Health Professionals of Ontario
and Stratford General Hospital

Please be advised that we represent Mrs. Ruth Godwin, who is a pharmacist employed by Stratford General Hospital and who is proposed to be included within both of the suggested bargaining units in the above-mentioned matters.

We will be appearing with Mrs. Godwin at the hearing scheduled for December 9th and 10th, 1975, and we will seek to present Mrs. Godwin's submissions as to the appropriateness of the present bargaining units. Our position, among others, is that pharmacists have no community of interest with the personnel sought to be included within such bargaining units.

Furthermore, we represent the Canadian Society of Hospital Pharmacists, Ontario Branch, and we will be seeking leave at the hearing to intervene on behalf of the Society to make representations on behalf of the Society as to the appropriateness of the bargaining unit. The Society represents pharmacists at a large number of other hospitals in Ontario who would find themselves in the same position as Mrs. Godwin, and any decision of the Board in this case would have a substantial impact on many of its members.

Yours very truly,
[sgd] "Douglas K. Gray"

4. Mr. Paliare, counsel to The Civil Service Association of Ontario (Inc.), objected to the Board entertaining representations from the Canadian Society of Hospital Pharmacists but at the outset of the hearing Mr. Gray specifically confined his representation to Mrs. Ruth Godwin, the pharmacist employed by the respondent.

5. Then, on February 9, 1976, the Board received the following telegram from Mr. Gray:

RE ASSOCIATION OF ALLIED HEALTH PROFESSIONALS
AND STRATFORD GENERAL HOSPITAL BOARD FILE 1070-
75-R RE CIVIL SERVICE ASSOCIATION OF ONTARIO AND
STRATFORD GENERAL HOSPITAL BOARD FILE 1026-75-R
PLEASE BE ADVISED THAT MY CLIENT RUTH GODWIN HAS
ADVISED ME THAT SHE DOES NOT WISH TO APPEAR FUR-
THER IN CONNECTION WITH THE ABOVE MATTERS AND
SHE HAS INSTRUCTED ME NOT TO APPEAR AT ANY FUR-
THER HEARINGS ON HER BEHALF
DOUGLAS K GRAY SOLICITOR FOR RUTH GODWIN

And then on February 12, 1976 the Board received a letter from Mr. Gray which reads:

Dear Sir:

Re: Association of Allied Health Professionals of Ontario and
Stratford General Hospital

Re: C.S.A.O. and Stratford General Hospital

Further to my letter dated December 4, 1975, I have now obtained further instructions and I intend to appear on Friday, February 13, 1976, to renew my request to intervene on behalf of the Canadian Society of Hospital Pharmacists, Ontario Branch.

Yours very truly,
[sgd] "Douglas K. Gray"

6. At the hearing convened on February 13th, the Board entertained the representations of Mr. Gray and the parties to the application with respect to status of the Canadian Society of Hospital Pharmacists, Ontario Branch (hereinafter referred to as "the Society") to intervene. Having carefully reviewed the submissions we are of the opinion that the Society has no legal status to entitle it to participate in these proceedings.

7. As a result of Mr. Gray's telegram it is clear that he no longer acts for Ruth Godwin, the only Pharmacist employed by the respondent. Mr. Gray indicated that Ms. Godwin was a member of the Society but he could not say that it was seeking to intervene on her behalf. In other words, Ms. Godwin's membership in the Society, particularly in the face of her withdrawal from the proceedings, is not evidence that the society represents her in this proceeding. Moreover, because the Society has not been formed for the purposes of collective bargaining, evidence of membership in it cannot be construed as evidence that a member intends to be represented by it in proceedings before this Board. Thus the Society does not possess any of the prerequisites that entitle it to the status of a party in these proceedings. (See *Re Northern Electric Company Limited and United Electrical, Radio and Machine Workers of America et al* (1963) 39 DLR 346, [1963] 2 OR 301, 63 CLLC 15,484; *Regina v. Ontario Labour Relations Board, ex parti Northern Electric Co. Ltd.* (1970), 14 DLR (3d) 537 (Ont. C.A.); *Hashman Construction – Division Ltd.* [1973] OLRB Dec. Mthly. Rep.

630; *G.S. Health Association*, [1967] OLRB Feb. Mthly. Rep. 885; *Canadian Safeway Limited*, [1969] OLRB Nov. Mthly. Rep. 965; *St. Mary's of the Lake Hospital*, [1968] OLRB Oct. Mthly. Rep. 682.

In *St. Mary's of the Lake Hospital* the Board observed:

7. It is quite a simple matter for a trade union to file evidence of representation on behalf of employees in a bargaining unit in order to participate in an application as a party. (See *Essex Health Association Case*, O.L.R.B. Monthly Report, February 1967, p. 885.) If a trade union does not file evidence of representation which evidence may take the form of a collective agreement or certificate covering employees in the bargaining unit, documentary evidence of membership or some other written form of authorization, then the Board has no other recourse than to find that the trade union which has failed to file such evidence is a stranger to the proceedings and is not entitled to participate as a party.

And in *Regina v. Ontario Labour Relations Board Ex parte Northern Electric Co. Ltd.* the Court of Appeal denied a would-be appellant status to appeal a decision on the basis that the "decision... [did] not aggrieve the would-be appellant in the sense of wrongfully refusing it any legal right depriving it of any legal right, affecting any title it may have in any matter or casting upon it any legal burden". Clearly the Society does not meet any of these tests.

9. The Board appreciates the purport of these submissions but is unable to accede to the request. The Ontario Labour Relations Board carries out its primary function by way of adjudication — the adversary presentation of reasoned argument and proofs to a neutral third party. In fact, given the legislative and judicial umbrella under which it operates the Board is required to act in this manner. (See *The Statutory Powers Procedure Act*, 1971 Stat. Ont., 1971, c. 47.) The interest claimed by the Society is an interest that could be claimed by another association or employer interested in the field of collective bargaining in the hospital industry and as such, in the context of an adjudicatory procedure, is too impractical to recognize. Moreover, while the Board considers the instant case to be important, it must be recognized that the Board proceeds on a case by case basis and is prepared to deviate from earlier decisions as the facts, argument and experience of subsequent cases demands. Thus the Society, when it is able to represent an affected employee, will have its "day in court". We are of the opinion that the associations in the *Gryd Construction* case had a much more direct interest in the proceedings before that panel of the Board than does the Society in the facts at hand.

10. This is not to say that the Society's views would not be of assistance to the Board. In fact, there has been continual criticism from the academic community that administrative tribunals engaged in enacting policy by way of adjudication ought to be more flexible in their decision-making format. (See Shapiro, *The Choice of Rulemaking or Adjudication in The Development of Administrative Policy* (1965), 78 Harv. L. Rev. 921; Peck, *The Atrophied Rule-Making Powers of the National Labour Relations Board* (1961), 70 Yale L.J. 729; Friendly, *The Federal Administrative Agencies: The Need for Better Definition of Standards* (1962), 75 Harv. L. Rev. 863, 1055, 1263.) Such a format would allow the tribunal to consult with groups that may, in the future, be affected by a determination and who, by reason of this ex-

perience, may have an informative contribution to make. Unfortunately, unlike the United States with its *Administrative Procedures Act*, tribunals in Ontario have been given no legislative mandate or support to proceed in this way and, without such guidance, mixed adjudicatory and consultative procedures are fraught with difficulties (particularly those associated with natural justice). And yet to allow all persons who could play a useful role in a determination to become a party under the existing procedural structure would severely undermine the speed, economy and general adjudicatory efficiency of the Board.

11. For all of these reasons we find that the Canadian Society of Hospital Pharmacists, Ontario Branch, is not entitled to be a party to these proceedings.

Editor's Note. The Board at the hearing delivered an oral decision that it would accept an amicus brief from the Canadian Society of Hospital Pharmacists, Ontario Branch.

1222-75-R Canadian Union of Operating Engineers, (Applicant) v. **The Wellesley Hospital**, (Respondent) v. Service Employees Union, Local 204, (Intervener #1) v. International Union of Operating Engineers, Local 796, (Intervener #2) v. Group of Employees, (Objectors).

BEFORE: Frank V. Boscarior, Vice-Chairman, and Board Members J. D. Bell and E. Boyer.

APPEARANCES: *K. Gilbert and V. McManus for the applicant; D. W. Brady and V. Singer for the respondent; J. Sack and A. Edge for intervenor #1; no one appeared for intervenor #2; D. W. Godfrey for the objectors.*

DECISION OF THE BOARD: February 24, 1976

1. The Board directs that the "Group of Employees" be added as a party to these proceedings.

2. This is an application requesting the taking of a pre-hearing representation vote. Pursuant to the decision of the Board November 19, 1975 this request was granted. The vote was conducted on December 3, 1975 and following a hearing before the Board January 13, 1976, the Registrar was directed to proceed with the taking of the count.

3. The pre-hearing application was further complicated by the fact that the Applicant was seeking to displace the bargaining rights heretofore possessed by Intervener #2 pursuant the collective agreement entered into between the Respondent and Intervener #2, dated November 11, 1974. In accordance with the Board's clearly established practice in displacement applications of defining the voting constituency in terms of the bargaining unit as defined in the collective agreement, the vote was directed amongst the employees in the following voting constituency:

“All Stationary Engineers, Hospital Equipment Maintenance Men and Helpers who work under these classifications employed by The Wellesley Hospital at its hospital in Metropolitan Toronto, save and except supervisors, those persons above the rank of supervisor, office employees and those persons covered by a subsisting agreement between the Hospital and S.E.U.”

In addition and again in keeping with the Board's practice in this respect. (See the *Nadeco Limited* case OLRB M.R. April, 1970, p.141), the employees were asked to indicate on the ballot their choice as to whether, in their employment relations with the respondent, they wished to be represented by the Applicant or by the incumbent trade union (Intervener #2).

4. The count undertaken in this matter revealed that of the 17 employees encompassed in the voting constituency and as shown on the voters' list, 9 ballots were marked in favour of the Applicant while 8 ballots were marked in favour of Intervener #2. However, during the course of these proceedings, both the Respondent and Intervener #1 submitted that the 11 employees classified as “Hospital Equipment Maintenance Men” heretofore included in the bargaining unit as defined in the said collective agreement, do not share a community of interest with the remaining 7 stationary engineers in that unit. Rather, it was suggested, that the former employees shared a sufficient community of interest with the employees encompassed in the “service” bargaining unit pursuant to the terms of the collective agreement entered into between the Respondent and Intervener #1, dated December 31, 1974. In particular, it was alleged that the said employees performed work essentially similar to that of a “Skilled Machinist” as referred to in Schedule A of that collective agreement. Put in other terms, the Board was asked to entertain the evidence of the Respondent and Intervener #1 in support of their respective positions that the appropriate resultant bargaining unit should be confined in terms of:

“All stationary engineers employed by the Wellesley Hospital in its boiler room at its hospital in Metropolitan Toronto, save and except supervisors, those above the rank of supervisor, and persons covered by subsisting collective agreements.”

5. The general principle to be applied in “displacement situations” was stated by the Board in the *Electrohome Limited* case OLRB M.R. December, 1967, p.854, at page 857, as follows:

“On an application for certification where the applicant union seeks to displace an incumbent union, the very least such applicant union is entitled to, if it wins the representation vote, is the same unit as was normally represented by the incumbent trade union.”

6. Although the resultant bargaining unit descriptions as ultimately determined by the Board, may differ from the wording as set out in the initial voting constituency (See the *Harding Carpets Limited* case (1975) OLRB Rep. 566), we would not, in any event, be prepared in the circumstances to “carve-out” the unit in the manner as proposed to us by the Respondent and Intervener #1, especially where, as in the instant case, it would appear that the parties to the relevant collective agreement have been content to “live” with such a unit description for some thirty years. Upon further reflection, it becomes manifestly clear

to us that the positions taken by the Respondent and Intervener #1 raise fundamental questions relating to the area of the work jurisdiction of the rival unions affected by this application. In these circumstances, we accordingly, are not prepared to convert these proceedings into a "jurisdictional dispute" inquiry pursuant to the provisions of Section 81 of the Act. Nor are we prepared, in these proceedings, to speculate upon the problems which may be encountered by Intervener #1, should it choose to subsequently seek a remedy against the Respondent through any arbitration proceedings which may be available to it under the terms of its collective agreement.

7. In the result, we are of the opinion that no useful purpose can be served by entertaining any further representations of the parties concerning the appropriateness of the bargaining unit.

8. In the particular circumstances, the Board therefore finds that all Stationary Engineers, Hospital Equipment Maintenance Men and Helpers who work under these classifications employed by The Wellesley Hospital at its hospital in Metropolitan Toronto, save and except supervisors, those persons above the rank of supervisor, office employees and those persons covered by a subsisting agreement between the Respondent and Service Employees Union, Local 204 constitute a unit of employees of the Respondent appropriate for collective bargaining.

9. The Board is satisfied that not less than thirty-five per cent of the employees of the Respondent in the bargaining unit were members of the Applicant at the time the application was made.

10. On the taking of the pre-hearing representation vote directed by the Board more than fifty per cent of the ballots cast were cast in favour of the Applicant.

11. A certificate will issue to the Applicant.

12. The Registrar will destroy the ballots cast in the pre-hearing representation vote taken in this matter following the expiration of 30 days from the date of this decision unless a statement requesting that the ballots should not be destroyed is received by the Board from one of the parties before the expiration of such 30 day period.

CASE LISTINGS FEBRUARY 1975

	Page
1. Applications for Certification	
(a) Bargaining Agents Certified	1
(b) Applications Dismissed	9
(c) Applications Withdrawn	11
2. Applications for Declaration Terminating Bargaining Rights	12
3. Applications for Declaration that Strike Unlawful	13
4. Application for Declaration that Lock-Out Unlawful	13
5. Applications for Consent to Prosecute	13
6. Application for Consent to Prosecute (Hospital Arbitration Act)	13
7. Complaints under Section 79 (Unfair Labour Practice)	13
8. Application for Section 55	15
9. Application under Section 73(2) (Continuation of Locals under Trusteeship)	15
10. Jurisdictional Dispute	15
11. References to Board Pursuant to Section 96	15
12. Applications under Section 112a	15
13. Applications for Reconsideration of Board's Decision	16

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING FEBRUARY 1976

Applications for Certification

BARGAINING AGENTS CERTIFIED

No Vote Conducted

0792-75-R: Mechanical Contractors Association Zone 10 (Applicant) v. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 599 (Respondent).

Unit: "all employers of plumbers, plumbers' apprentices, steam fitters, steam fitters' apprentices and welders for whom the respondent has bargaining rights in the County of Simcoe, the District Municipality of Muskoka, the Townships of Rama, Mara and Thorah in the County of Ontario, and the Townships of Carling, Ferguson, McDougall, McKellar, Christie, Foley, Conger and Humphrey in the District of Parry Sound, in the residential and in the industrial, commercial and institutional sectors of the construction industry." (no employees in the unit).

0895-75-R: Marble Masons, Tile Layers and Terrazzo Workers' Union No. 31, affiliated with the Bricklayers, Masons and Plasterers International Union of America (Applicant) v. Lazio Drywall Taping Company (Respondent) v. International Brotherhood of Painters and Allied Trades Local 1891 (Party added by the Board).

Unit: "all plasterers and plasterers' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (15 employees in the unit).

0974-75-R: Ontario Nurses' Association (Applicant) v. Westmount Hospital (Respondent).

Unit #1: "all registered and graduate nurses employed in a nursing capacity at Westmount Hospital, Thunder Bay, save and except supervisors, persons above the rank of supervisor, persons covered by subsisting collective agreements and persons regularly employed for not more than 24 hours per week." (10 employees in the unit).

Unit #2: "all registered and graduate nurses regularly employed in a nursing capacity at Westmount Hospital, Thunder Bay, for not more than 24 hours per week save and except supervisors and those above the rank of supervisor and persons covered by subsisting collective agreements." (8 employees in the unit).

1121-75-R: United Steelworkers of America (Applicant) v. Dunn Welding Supplies Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff." (6 employees in the unit). (*Having regard to the agreement of the parties*).

1140-75-R: Local Union 105 International Brotherhood of Electrical Workers (Applicant) v. Orriss Electric Limited (Respondent) v. Christian Trade Unions of Canada (Local 6) (Intervener) v. Employee (Objector).

Unit: "all electricians and electricians' apprentices in the employ of the respondent in the County of Wentworth including part of Township of North Dumfries annexed from Beverly Township and the Township of Nassagaweya and the Town of Burlington in the County of Halton, save and except non-working foremen and persons above the rank of non-working foreman." (20 employees in the unit).

1197-75-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Humpty Dumpty Foods Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent employed in the City of London, Ontario, save and except supervisors and persons above the rank of supervisor." (7 employees in the unit). (*Having regard to the agreement of the parties*).

1340-75-R: Fur, Leather, Shoe & Allied Workers' Union, Local 82, affiliated with the Amalgamated Meat Cutters & Butcher Workmen of North America, AFL-CIO (Applicant) v. Lindzon Limited (Respondent).

Unit: "all cutters, operators, blockers, squarers, finishers and tapers engaged in work on furs of all description employed by the respondent at its plant in Metropolitan Toronto save and except foremen and foreladies and those above the rank of foreman and forelady." (8 employees in the unit).

1380-75-R: Carpenters District Council of Lake Ontario on behalf of Locals 397, 572, 1071 and 1450 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. The Jackson-Lewis Company Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the County of Ontario (except the Townships of Pickering, Rama, Mara and Thorah) and the County of Durham (except the Township of Hope), save and except non-working foremen and persons above the rank of non-working foreman." (8 employees in the unit).

1504-75-R: Oil, Chemical and Atomic Workers International Union (Applicant) v. Wiltshire Catering Division of J. V. Wiltshire Ltd. (Respondent).

Unit: "all employees of the respondent employed at Fiberglass Canada Ltd., Sarnia, Plant Cafeteria, Kenny St., Sarnia, Ontario, save and except the manager, persons above the rank of manager, office and sales staff, and students employed during the school vacation period." (11 employees in the unit). (*Having regard to the agreement of the parties*).

1537-75-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Berkim Construction Limited (Respondent).

Unit: "all carpenters, carpenters' apprentices and construction labourers in the employ of the respondent in the District of Kenora, including the Patricia Portion, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

1538-75-R: Ontario Nurses' Association (Applicant) v. Clinton Public Hospital (Respondent).

Unit: "all registered and graduate nurses regularly employed in a nursing capacity by Clinton public Hospital, Clinton, Ontario for not more than twenty-four hours per week save and except head nurses and those above the rank of head nurse." (10 employees in the unit).

1539-75-R: Mississauga Public Library Staff Association (Applicant) v. City of Mississauga Public Library Board (Respondent).

Unit: "all employees of the respondent in the City of Mississauga save and except department/-branch heads, persons above the rank of department/branch head, students employed during the school vacation period and persons regularly employed for not more than 24 hours per week." (not stated employees in the unit). (For purposes of clarity the Board noted that: ... (b) The Department head Accounting/Personnel, the Accounting/Personnel assistant, the secretary to the Chief Librarian and the assistant to the secretary to the Chief Librarian are excluded from the unit by the agreement of the parties).

1559-75-R: Lake Ontario District Council, on behalf of Locals 397, 572, 1071 and 1450 of The United Brotherhood of Carpenters and Joiners of America (Applicant) v. E. S. Martin Construction (Ontario) Limited (Respondent).

Unit: "all carpenters and carpenters apprentices in the employ of the respondent in the County of Ontario (except the Townships of Pickering, Rama, Mara and Thorah) and the County of Durham (except the Township of Hope), save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

1566-75-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. M. S. Thompson & Associates Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the United Counties of Stormont, Dundas and Glengarry, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

1568-75-R: The Ontario Acoustical and Drywall District Council, United Brotherhood of Carpenters and Joiners of America, on behalf of affiliated Locals 1316, 1617, 1940 and 2041 (Applicant) v. Suttonwood Group Incorporated (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton in the Township of Pickering in the County of Ontario, engaged in the installation and erection of acoustical and drywall, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit). (For the purpose of clarity, the Board declared that drywall tapers are not included in the bargaining unit).

1569-75-R: Ontario Nurses' Association (Applicant) v. Golden Manor - Timmins Home for the Aged (Respondent).

Unit: "all registered and graduate nurses employed by the respondent engaged in a nursing capacity, save and except Director of Nursing and persons above the rank of Director of Nursing." (9 employees in the unit). (*Having regard to the agreement of the parties*).

1585-75-R: Carpenters' District Council of Toronto and Vicinity on behalf of Locals 27, 666, 681, 1133, 1963, 3227 and 3233 (Applicant) v. Bardeau Furniture and Equipment Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen, persons above the rank of non-working foreman and persons covered by a collective agreement between the respondent and the United Brotherhood of Carpenters and Joiners of America, Local Union 2679." (2 employees in the unit).

1597-75-R: Warehousemen and Miscellaneous Drivers Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Standards Brands Canada Limited (Respondent).

Unit: "all employees of the respondent at 129 Railside Road, Don Mills, Ontario, save and except foremen, those above the rank of foreman, office and sales staff, persons employed for not more than 24 hours per week and students employed during the school vacation periods." (38 employees in the unit). (*Having regard to the agreement of the parties.*)

1616-75-R: Retail Clerks Union, Local 206 (Applicant) v. Zehrs Markets (Division of Zehrmart Limited) (Respondent) v. Diamond "Z" Association (Intervener).

Unit: "all employees of the respondent at its warehouse located at 259 Gage Avenue in the City of Kitchener, save and except foremen, persons above the rank of foreman and persons covered by subsisting collective agreements." (8 employees in the unit). (*Having regard to the agreement of the parties.*)

1633-75-R: International Association of Machinists and Aerospace Workers (Applicant) v. Highland Ford Sales Limited (Respondent).

Unit: "all office and clerical employees of the respondent in Sault Ste Marie, save and except supervisors and persons above the rank of supervisor." (8 employees in the unit).

1639-75-R: Local Union 1190, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Pugliese Bros. Carpenter (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the County of Ontario (except the Townships of Pickering, Rama, Mara and Thorah) and the County of Durham (except the Township of Hope), save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

1640-75-R: Service Employees Union, Local 210 affiliated with Service Employees International Union, AFL-CIO-CLC (Applicant) v. South Huron Hospital Association (Respondent) v. Ontario Nurses' Association (Intervener).

Unit: "all employees of the South Huron Hospital Association at Exeter, Ontario, regularly employed for not more than 24 hours per week, save and except supervisors and those above the rank of supervisor, professional medical staff, graduate and undergraduate nurses, graduate and undergraduate pharmacists, graduate dieticians, technical personnel and office and clerical staff." (14 employees in the unit). (*Having regard to the agreement of the parties.*) (For purposes of clarity the Board noted that registered nurses are excluded from the above described bargaining unit).

1644-75-R: United Brotherhood of Carpenters and Joiners of America, Millwrights' Local 2309 (Applicant) v. Apex Process Mechanical Ltd. (Respondent).

Unit: “all millwrights and millwrights’ apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman.” (2 employees in the unit).

1646-75-R: United Steelworkers of America (Applicant) v. Cla-Val Canada Limited (Respondent) v. Group of Employees (Objectors).

Unit: “all employees of the respondent company in St. Catharines, save and except foremen, persons above the rank of foreman, office and sales staff.” (9 employees in the unit). (*Having regard to the agreement of the parties*).

1648-75-R: Ready-Mix, Building Supply, Hydro & Construction Drivers, Warehousemen and Helpers Local 230 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Boston Excavating & Grading Company Limited (Respondent).

Unit: “all truck drivers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman.” (8 employees in the unit.).

1649-75-R: Christian Labour Association of Canada (Applicant) v. Aka Mechanical Contracting Limited (Respondent).

Unit: “all plumbers and plumbers’ apprentices in the employ of the respondent in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, save and except non-working foremen and persons above the rank of non-working foreman.” (6 employees in the unit). (*Having regard to the foregoing*).

1650-75-R: Service Employees Union, Local 478 AFL:CIO:CLC (Applicant) v. Sensenbrenner Hospital (Respondent).

Unit: “all employees of the Sensenbrenner Hospital at Kapuskasing, Ontario, save and except supervisors, and those above the rank of supervisor, professional medical staff, graduate and undergraduate nurses, graduate and student dieticians, graduate and undergraduate pharmacists, technical personnel, office and clerical staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period.” (57 employees in the unit). (*Having regard to the agreement of the parties*).

1651-75-R: Service Employees Union, Local 210 affiliated with Service Employees International Union, AFL-CIO-CLC (Applicant) v. Beacon Hill Lodges of Canada Ltd. (Respondent).

Unit: “all employees of Beacon Hill Lodges of Canada Ltd. in Windsor, Ontario regularly employed for not more than 24 hours per week and students employed during the school vacation period save and except supervisors and those above the rank of supervisor and persons covered by a subsisting collective agreement.” (18 employees in the unit).

1654-75-R: International Brotherhood of Electrical Workers, Local Union 773 (Applicant) v. Chubb Security Systems Division of Chubb Industries Limited (Respondent).

Unit: "all employees of the respondent at Windsor, save and except managers, persons above the rank of manager, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (10 employees in the unit).

1658-75-R: Canadian Food and Allied Workers Local Union 633, chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. Shoppers Meat Markets Limited, carrying on business as Metro Provisions (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen and foreladies, persons above the rank of foreman and forelady, office staff, sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (32 employees in the unit). (*Having regard to the agreement of the parties*).

1659-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. 7-11 Pools & Metalfab Limited (Respondent).

Unit: "all employees of the respondent engaged in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, security guards, office and clerical staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (10 employees in the unit). (*Having regard to the agreement of the parties*).

1665-75-R: The Carpenters' District Council of Toronto and Vicinity, on behalf of Locals 27, 666, 681, 1133, 1963, 3227 and 3233, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Manatara Construction Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

1672-75-R: The Carpenters' District Council of Toronto and Vicinity, on behalf of Locals 27, 666, 681, 1133, 1963, 3227 and 3233, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Flynn and Son General Contractor (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen, and persons above the rank of non-working foreman." (2 employees in the unit).

1676-75-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Collins Drywall (Respondent).

Unit: "all employees of the respondent in the District of Kenora, including the Patricia Portion, engaged in the installation and erection of acoustical and drywall, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit). (*Having regard to the representations of the parties*).

1694-75-R: Chatham Construction Workers Association, Local No. 53, affiliated with the Christian Labour Association of Canada (Applicant) v. Mario Electric Limited (Respondent).

Unit: "all electricians and electricians' apprentices in the employ of the respondent in the Counties of Essex and Kent, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

Applications Certified Subsequent to Pre-Hearing Vote

1222-75-R: Canadian Union of Operating Engineers (Applicant) v. The Wellesley Hospital (Respondent) v. Service Employees Union, Local 204 (Intervener #1) v. International Union of Operating Engineers, Local 796 (Intervener #2) v. Group of Employees (Objectors).

Unit: "all Stationary Engineers, Hospital Equipment Maintenance Men and Helpers who work under these classifications employed by The Wellesley Hospital at its hospital in Metropolitan Toronto, save and except supervisors, those persons above the rank of supervisor, office employees and those persons covered by a subsisting agreement between the Respondent and Service Employees Union, Local 204." (17 employees in the unit).

Number of names of persons on revised voters' list		17
Number of persons who cast ballots		17
Number of Ballots marked in favour of applicant	9	
Number of ballots marked in favour of intervener 796	8	

1447-75-R: Canadian Chemical Workers Union (Applicant) v. Imperial Leaf Tobacco Company of Canada Limited (Respondent) v. Local 843, International Chemical Workers' Union (Intervener).

Unit: "all seasonal employees of the Company below the rank of Foreman or Supervisor, working in the plant at John Street North, Aylmer, Ontario, save and except Foremen and Supervisors, persons above the rank of Foreman or Supervisor, clerical, office, technical, grading and buying staff, nurses, security guards, probationary employees, persons regularly employed for not more than twenty-four (24) hours per week, persons covered by the other collective agreement between Imperial Leaf Tobacco Company of Canada Limited and the International Chemical Workers Union, Local 843, expiring September 25, 1974." (418 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on revised voters' list		305
Number of persons who cast ballots		283
Ballots segregated and not counted	17	
Number of ballots marked in favour of applicant	259	
Number of ballots marked in favour of intervener	7	

1468-75-R: Canadian Chemical Workers Union (Applicant) v. G. Tamblyn Limited (Respondent) v. International Chemical Workers Union and its Local 431 (Intervener).

Unit: "all employees of the respondent at its warehouse located at Bramalea in the Regional Municipality of Peel save and except supervisors persons above the rank of supervisor, and office employees." (47 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on revised voters' list		45
Number of persons who cast ballots		38
Number of ballots marked in favour of applicant	38	
Number of ballots marked in favour of intervener	0	

1509-75-R: Canadian Chemical Workers Union (Applicant) v. Dearborn Chemical Company Limited (Respondent) v. Local 177, International Chemical Workers' Union (Intervener).

Unit: "all employees of the respondent at its plant in Mississauga, Ontario, save and except foremen, persons above the rank of foreman, office staff, laboratory staff (including customer services), stationary engineer, office and laboratory watchman and sales and service men." (9 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on revised voters' list		9
Number of persons who cast ballots		8
Number of ballots marked in favour of applicant	7	
Number of ballots marked in favour of intervener	1	

1546-75-R: Brewery, Soft Drink Distillery, Distributors and Miscellaneous Workers, Local 1000 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Pop Shoppes (Toronto) Limited (Respondent).

Unit: "all employees of the respondent at Metropolitan Toronto save and except foremen, those above the rank of foreman, office and sales staff, persons regularly employed for not more than twenty-four (24) hours per week and students employed during a school vacation period." (7 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of person on voters' list		6
Number of persons who cast ballots		5
Number of ballots marked in favour of applicant	4	
Number of ballots marked against applicant	1	

Applications Certified Subsequent to Post-Hearing Vote

0084-75-R: Warehousemen and Miscellaneous Drivers Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. S.S. Kresge Company Limited (Respondent).

Unit: "all employees of the respondent at its distribution centre in Brampton, save and except foremen, persons above the rank of foreman and office staff." (33 employees in the unit).

Number of names of persons on list as originally prepared by employer		45
Number of persons who cast ballots		45
Number of ballots marked in favour of applicant	37	
Number of ballots marked against applicant	8	

1490-75-R: Canadian Brotherhood of Railway, Transport and General Workers (Applicant) v. Laidlaw Transport Limited (Respondent) v. Canadian Transportation Workers Union #199 (Intervener).

Unit: "all employees classified as drivers, dockmen and checkers employed at or out of the Company's terminal or terminals at the City of Hamilton and in the Regional Municipality of Wentworth." (10 employees in the unit).

Number of names of persons on voters' list		10
Number of persons who cast ballots		10
Number of ballots marked in favour of applicant	10	
Number of ballots marked in favour of intervener	0	

APPLICATIONS FOR CERTIFICATION DISMISSED

No Vote Conducted

0640-75-R: United Cement Lime & Gypsum Workers' International Union (Applicant) v. Point Anne Quarry Company, a Division of Standard Industries Limited (Respondent) v. Christian Labour Association of Canada (Intervener). (26 employees).

0763-75-R: Teamsters, Chauffeurs, Warehousemen and Helpers Local 91 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Hoffman Concrete Products Limited (Respondent) v. Group of Employees (Objectors). (19 employees).

0831-75-R: Retail Clerks Union, Local 486 (Applicant) v. Leons Furniture Limited (Respondent) v. Group of Employees (Objectors). (35 employees).

1445-75-R: International Union of Operating Engineers, Local 793 (Applicant) v. Fischbach-Spiers, A Private Joint Venture (Respondent). (4 employees).

Certification Dismissed Subsequent to Pre-Hearing Vote

1465-75-R: Canadian Union of Public Employees (Applicant) v. Bethesda Home (Respondent).

Unit: "all employees of Bethesda Home at Vineland, Ontario save and except professional medical staff, graduate nurses, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, supervisors, persons above the rank of supervisor, office staff and persons regularly employed for not more than twenty-four (24) hours per week and students employed during the school vacation period." (78 employees in the unit). (For purposes of clarity employees engaged in technical and paramedical classifications were not included in the appropriate unit).

Number of names of persons on list as originally prepared by employer		75
Number of persons who cast ballots		72
Number of ballots marked in favour of applicant	32	
Number of ballots marked against applicant	40	

1482-75-R: International Union of Operating Engineers Local 772 (Applicant) v. Carnation Co. Limited (Respondent) v. Retail, Wholesale and Department Store Union, AFL-CIO-CLC, and Local 440 of the Retail, Wholesale and Dairy Workers Union (Intervener).

Voting Constituency: "All Stationary Engineers employed by the respondent in the power plant at Alymer, Ontario, save and except Assistant Chief Engineer and persons above the rank of Assistant Chief Engineer." (6 employees). (For purposes of clarity, the Board noted that the Assistant Chief Engineer acts as a foreman).

Number of names of persons on list as originally prepared by employer	6
Number of persons who cast ballots	6
BALLOT BOX SEALED	

1511-75-R: International Woodworkers of America (Applicant) v. Reed Ltd. (Respondent) v. Canadian Union of Industrial Employees (Intervener).

Voting Constituency: "All employees of the respondent at its furniture division, at Metropolitan Toronto, save and except foremen, foreladies, persons above the rank of foreman and forelady, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (375 employees in the unit).

Number of names of persons on revised voters' list	385
Number of persons who cast ballots	344
Number of spoiled ballots	22
Number of ballots marked in favour of applicant	139
Number of ballots marked in favour of intervener	183

1512-75-R: Local 1590, International Brotherhood of Electrical Workers (Applicant) v. Bernardin of Canada Limited (Respondent).

Voting Constituency: "All employees of the respondent in Metropolitan Toronto save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation period." (59 employees).

Number of names of persons on revised voters' list	67
Number of persons who cast ballots	54
Number of ballots excluding segregated ballots cast by persons whose names appear on voters' list	54
Ballot Box Sealed	

Certification Dismissed Subsequent to Post-Hearing Vote

0804-75-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers, (UAW) (Applicant) v. Daymond Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in Mississauga, save and except foremen, persons above the rank of foreman, office and sales staff, students employed during the school vacation period and persons regularly employed for not more than 24 hours per week." (48 employees in the unit).

Number of names of persons on revised voters' list	24
Number of persons who cast ballots	24
Ballots segregated and not counted	1
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	18

1216-75-R: Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers (Applicant) v. Smith Beverages Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of Smith Beverages Limited, save and except area managers, foremen, persons above the rank of area manager and foreman, office staff and students employed for the school vacation period." (19 employees in the unit).

Number of names of persons on voters' list		21
Number of persons who cast ballots	19	
Number of spoiled ballots	0	
Number of ballots marked in favour of applicant	5	
Number of ballots marked in favour of intervener	14	

1469-75-R: United Steelworkers of America (Applicant) v. Canadian Wire Brush Co. Division of Sweepco Industries Inc. (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Barrie, save and except foremen, persons above the rank of foreman, office and sales staff, and students employed during the school vacation period." (31 employees in the unit).

Number of names of persons on revised voters' list		27
Number of persons who cast ballots	25	
Number of spoiled ballots	0	
Number of ballots marked in favour of applicant	7	
Number of ballots marked against applicant	18	

APPLICATIONS FOR CERTIFICATION WITHDRAWN

1446-75-R: Amalgamated Clothing Workers of America (Applicant) v. Dutch Laundry and Dry Cleaners Ltd. (Respondent). (11 employees).

1448-75-R: International Union of Operating Engineers, Local 793 (Applicant) v. S. N. C. Spiers Ltd. (Respondent). (3 employees).

1449-75-R: International Union of Operating Engineers, Local 793 (Applicant) v. S. N. C. Spiers Ltd. (Respondent). (5 employees).

1586-75-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. National Grocers Company Limited (Respondent). (3 employees).

1591-75-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. Hugh Murray 1974 Ltd. (Respondent). (2 employees).

1598-75-R: Warehousemen and Miscellaneous Drivers Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Club Coffee Company (Respondent). (40 employees).

1599-75-R: Warehousemen and Miscellaneous Drivers Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Mello-cup Coffee Company (Respondent). (40 employees).

1600-75-R: Warehousemen and Miscellaneous Drivers Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Becharas Coffee Company (Respondent). (40 employees).

1601-75-R: Warehousemen and Miscellaneous Drivers Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Mojabo Coffee Company (Respondent). (40 employees).

1602-75-R: Warehousemen and Miscellaneous Drivers Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Coffee Delivery Service (Respondent). (40 employees).

1652-75-R: Service Employees Union, Local 204 Affiliated with the O.F. of L., C.I.O., C.L.C. (Applicant) v. The Mount Sinai Hospital (Respondent). (29 employees).

1684-75-R: Wood, Wire & Metal Lathers International Union Local 562 (Applicant) v. Active Tile and Carpet (Respondent). (3 employees).

Applications for Declaration Terminating Bargaining Rights

1165-75-R: Lois Chambers (Applicant) v. United Electrical, Radio and Machine Workers of America and its Local 539 (respondent). (*Granted*).

Unit: "all hourly-rated employees of Canadian General Electric Company Limited at its electronic components operation at 189 Dufferin Street in Toronto, save and except foremen and foreladies, persons above the rank of foreman and forelady, engineering assistants, laboratory assistants, security guards and office and sales staff." (17 employees in the unit).

Number of names of persons on voters' list	17
Number of persons who cast ballots	17
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	7
Number of ballots marked against respondent	10

1433-75-R: Terry Walton (Applicant) v. The Civil Service Association of Ontario, Inc. (Respondent) v. Fleetview Services Limited (Fleetwood Ambulance Service) (Intervener). (*Granted*).

Unit: "all employees of Fleetwood Services Limited at Hamilton employed in its Fleetwood Ambulance service Division save and except supervisors, persons above the rank of supervisor, office staff and persons regularly employed for not more than 24 hours per week." (21 employees in the unit).

Number of names of persons on revised voters' list	20
Number of persons who cast ballots	20
Number of ballots marked in favour of respondent	7
Number of ballots marked against respondent	13

1595-75-R: Wegu Canada Inc. (Applicant) v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America. (U.A.W.) (Respondent). (5 employees). (*Granted*).

1596-75-R: Don Shingler (Applicant) v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) Local 252 (Respondent). (35 employees). (*Granted*).

Application for Declaration that Strike Unlawful

1637-75-U: Ball Brothers Limited (Applicant) v. Local Union 1739 of the International Brotherhood of Electrical Workers, Bill Brady, Donald Bidwell, Luigi Bizzotto, Robert Campbell, David Carruthers, Bill Carsons, Charles Devlin, David Derroches, John Hawkins and Tom Pridham (Respondents) v. Christian Labour Association of Canada (Intervener). (*Direction*).

Application for Declaration that Lock-out Unlawful

1201-75-U: Amalgamated Meat Cutters and Butcher Workmen of North America (Applicant) v. Primo Importing & Distributing Co. Limited (Respondent). (*Withdrawn*).

1588-75-U: Mr. Paul Dillon (Applicant) v. Mrs. Deborah Brown, Mr. Stephen Lewis (Respondents). (*Dismissed*).

Application for Consent to Prosecute (Hospital Arbitration Act).

63-75-PH: Canadian Union of Operating Engineers Local 101 (Applicant) v. Kemptville District Hospital (Respondent). (*Withdrawn*).

Complaints under Section 79 (Unfair Labour Practice)

7436-74-U: Retail Clerks Union, Local 206 (Complainant) v. Zehr's Markets Ltd. Ottawa Street, Kitchener (Respondent). (*Withdrawn*).

0555-75-U: Clifford Renaud et al (Complainants) v. The United Steelworkers of America, Local 2471, and Hawker Industries Limited, Canadian Bridge Division (Respondents). (*Withdrawn*).

1320-75-U: United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC (Complainant) v. Revel International (Respondent). (*Withdrawn*).

1327-75-U: Zdzislaw Orminski (Complainant) v. Bakery and Confectionery Workers, International Union of America, Local 426, and Christie's Bread Division of Nabisco Limited (Respondents). (*Dismissed*).

1356-75-U: Pattern Makers League of North America, Toronto Association (Complainant) v. Modern Pattern Works Ltd. (Respondent). (*Granted*).

1359-75-U: Retail Clerks International Association (Complainant) v. Safeguard Drugs Ltd. (Respondent). (*Granted*).

1413-75-U: Pasquale Bosco (Complainant) v. Sheet Metal Workers International Association Local Union 540 (Respondent). (*Withdrawn*).

1438-75-U: Gunter J. Petrick (Complainant) v. York Condominium Corporation #75 (Respondent). (*Withdrawn*).

1513-75-R: Labourers' International Union of North America, Local 183 (Complainant) v. Inaugural Investments Limited (Respondent). (*Withdrawn*).

1523-75-U: E. Schweizer (Complainant) v. Amalgamated Transit Union, Local 113 (Respondent). (*Dismissed*).

1524-75-U: Brewery, Soft Drink Distillery, Distributors and Miscellaneous Workers, Local 1000 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Complainant) v. Pioneer Petroleums (Respondent). (*Withdrawn*).

1552-75-U: John Multari (Complainant) v. International Chemical Workers Union, Local 813 (Respondent). (*Withdrawn*).

1561-75-U: Canadian Union of Operating Engineers (Complainant) v. Westinghouse Canada Limited (Respondent). (*Withdrawn*).

1577-75-U: Herculano Fernandes (Complainant) v. Sheet Metal Workers Union Local 540 (Respondent). (*Withdrawn*).

1618-75-U: Ronald N. Arnold, 49 Ralgreen Crescent, Kitchener, Ontario (Complainant) v. The Canadian Brotherhood of Railway, Transport and General Workers, Local 304 c/o Wm. Mazmanian, 70 Duncairn, Kitchener (Respondent). (*Withdrawn*).

1635-75-U: International Leather Goods, Plastic and Novelty Workers Union Local 8 (Complainant) v. Ray Plastics Limited (Respondent). (*Withdrawn*).

1642-75-U: The International Association of Machinists and Aerospace Workers, Local Lodge 1105: Shop & Office bargaining units (Complainant) v. Koehring Canada Limited, Koehring-Waterous Division (Respondent). (*Withdrawn*).

1661-75-U: Hotel, Motel, Restaurant, Employees' and Beverage Dispensers' Union Local 757 (Complainant) v. Crossroads Motor Inn Ltd. (Respondent). (*Withdrawn*).

Application under Section 55

0756-75-R: Warehousemen and Miscellaneous Drivers Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Provincial Fruit Company (Ottawa) Limited (Respondent). (*Dismissed*).

Applications under Section 73(2) (Continuation of Locals under Trusteeship)

T-74-74: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Local Union 1946 of the United Brotherhood of Carpenters and Joiners of America (Respondent). (*Dismissed*).

Jurisdictional Dispute

7375-74-JD: The United Brotherhood of Carpenters and Joiners of America, Local 1946 (Complainant) v. Urban Consolidated Construction Corporation Ltd., Talbot Square Ltd., Reliance Development Project Management Limited, 290632 Ontario Limited, and Labourers' International Union of North America, Local 183 (Respondents). (*Dismissed*).

References to Board Pursuant to Section 96

1556-75-M: Mr. J. G. Sweet (Employer) v. United Steelworkers of America, Local 13911 (Trade Union). (*Affirmative*).

1557-75-M: Clifton Arms Hotel (formerly known as Grigg Hotel) (Employer) v. Retail, Wholesale, Hotel and Restaurant Employees Union, Local 448 (Trade Union). (*Affirmative*).

Applications under Section 112a

1391-75-M: The United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of The United States and Canada, Local 552 (Applicant) v. P. T. McAvoy Plumbing and Heating Co. Ltd. (Respondent). (*Withdrawn*).

1416-75-M: International Brotherhood of Electrical Workers, Local 1788 (Applicant) v. Ontario Hydro (Respondent). (*Withdrawn*).

1417-75-M: International Brotherhood of Electrical Workers, Local 1788 (Applicant) v. Ontario Hydro (Respondent). (*Withdrawn*).

1431-75-M: International Union of Operating Engineers, Local 793 on Behalf of Martin Malonowich (Applicant) v. Toronto Construction Association & V.K. Mason Construction Ltd. (Respondents). (*Withdrawn*).

1495-75-M: Carpenters' District Council of Toronto and Vicinity (Applicant) v. The Charles Nolan Company Limited and The General Contractors' Section of The Toronto Construction Association (Respondents). (*Withdrawn*).

1530-75-M: Labourers' International Union of North America, Local 183 (Applicant) v. L & M Striping Company Ltd. (Respondent). (*Granted*).

1607-75-M: Labourers' International Union of North America, Local 183 (Applicant) v. Rex Forming Ltd. (Respondent). (*Withdrawn*).

1608-75-M: Labourers' International Union of North America, Local 183 (Applicant) v. Valbridge Construction Limited (Respondent). (*Withdrawn*).

1609-75-M: Labourers' International Union of North America, Local 183 (Applicant) v. Newcrete Cement Finishing Co. (Respondent). (*Withdrawn*).

1611-75-M: Labourers' International Union of North America, Local 183 (Applicant) v. Pasquale Goodwork Concrete (Respondent). (*Withdrawn*).

1612-75-M: Labourers' International Union of North America, Local 183 (Applicant) v. Star-Wall Concrete Forming Ltd. (Respondent). (*Withdrawn*).

1613-75-M: Labourers' International Union of North America, Local 183 (Applicant) v. Constructa Engineering Limited (Respondent). (*Withdrawn*).

1614-75-M: Labourers' International Union of North America, Local 183 (Applicant) v. Marra Stage Working (Respondent). (*Withdrawn*).

1627-75-M: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union 46 (Applicant) v. F. Happe Plumbing & Heating Limited (Respondent). (*Granted*).

1685-75-M: The Built-Up Roofers' Damp and Waterproofers' Section of the Sheet Metal Workers' International Association, Local 562 (Applicant) v. Braithwaite Roofing Ltd. (Respondent). (*Withdrawn*).

Applications for Reconsideration of Board's Decision – Certification

1086-75-R: The Canadian Brotherhood of Railway, Transport & General Workers (Applicant) v. Charterways Co. Limited (Respondent). (*Request Denied*).

1179-75-R: The Carpenters' District Council of Toronto and Vicinity, United Brotherhood of Carpenters and Joiners of America, on behalf of Local Union 1190 (Applicant) v. Bramalea Consolidated Developments Limited (Respondent) v. Group of Employees (Objectors). (*Request Denied*).

Application for Reconsideration of Board's Decision – Section 55

0756-75-R: Warehousemen and Miscellaneous Drivers Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Provincial Fruit Company (Ottawa) Limited (Respondent). (*Request Denied*).

Application for Reconsideration of Board's Decision – Jurisdictional Dispute

5716-74-JD: Local 527 Labourers' International Union of North America (Complainant) v. Local 71 of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry (Respondent #1) v. Local 586 of the International Brotherhood of Electrical Workers (Respondent #2) v. Ellis-Don Limited (Respondent #3). (*Request Denied*).

Application for Reconsideration of Board's Decision – Section 112a

1406-75-M: The International Association of Bridge, Structural and Ornamental Ironworkers, Local Union 700 (Applicant) v. The Lummus Company Canada Limited, and The Ontario Erectors Association (Respondents). (*Request Denied*).



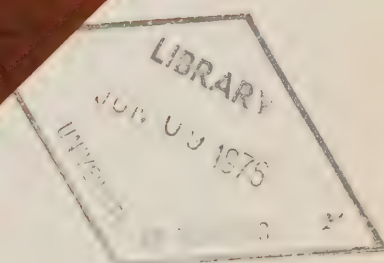
Labour
Relations Board

Decisions March 76

Government
Publications

24NLR

Q54



ONTARIO LABOUR RELATIONS BOARD

Acting Chairman RORY F. EGAN

Vice-Chairmen G.W. ADAMS
F.V. BOSCARIOL
K.M. BURKETT
D.D. CARTER
G.S.P. FERGUSON, Q.C.
R.A. FURNESS
D.H. KATES

Members H.J.F. ADE
D.B. ARCHER
J.D. BELL
E. BOYER
A. GRIBBEN
L. HEMSWORTH
O. HODGES
F.W. MURRAY
P.J. O'KEEFFE
J.E.C. ROBINSON, Q.C.
N. SATTERFIELD
H. SIMON
W.H. WIGHTMAN

Executive Assistant to the Chairman L.V. PATHE *Registrar* A.M. BRUNSKILL

Solicitor S.D. SAXE

Editor, Monthly Report S.D. SAXE

**ONTARIO
LABOUR RELATIONS BOARD
REPORTS**

**A Monthly Series of Decisions from the
Ontario Labour Relations Board**

Cited [1976] OLRB REP.

NOTICE

Re S.112*a* of the Labour Relations Act

On May 5th, 1976 an Order-in-Council was approved by Her Honour The Lieutenant-Governor providing for a charge for proceedings under this section in the following terms:

The expense of proceedings under section 112*a* of the Act including preliminary proceedings, hearing and preparing decisions in respect of the referral of one or more grievances under a collective agreement is fixed at \$200 for each day or part of a day that a hearing is held.

CASES REPORTED

Armour Associates Ltd. Re Pharmacists & Professional Employees U., L 207	117
Baker Gurney & McLaren Ltd. And Graphic Arts Int'l U., L 28-B, Toronto	78
Canadian Newspapers Co. Ltd., by the Intelligencer, Published, Re Kingston Typographical U., #204 And Group of Employees	120
DeVilbiss (Canada) Ltd. Re UE	49
Dufferin Steel Co., Awico Div. Re BSOIW, L 721	81
Libby, McNeill & Libby of Canada Ltd. And L 107, CUOE & Clifford J. Scott	102
Mitten Industries Galt Ltd. on behalf of its Aff'l Co., Field Price Ltd. Re John Gute And L 92 IMAW	76
Modern Pattern Works Ltd. Re PML, Toronto Assoc	67
Napev Const. Ltd. & Vepan Leaseholds Ltd. Re The Toronto Bldg. & Const. Trades Council	109
N & D Supermarket Ltd. Re USA And Group of Employees	112
Neo Industries Ltd. Re Oil & Gas Technicians, Serv., Domestic & General Workers U., L 1267	88
Onward Mfg. Co. Ltd. Re LU 2345 IBEW, AFL CIO CLC	71
Primo Importing & Distributing Co. Ltd. Re Amalgamated Meat Cutters & Butcher Workmen of N. America	104
Seaway Hotels (Ont.) Ltd. Re Int'l Beverages Dispensers' & Bartenders' U., L 280, of Hotel & Restaurant Employees' & Bartenders' Int'l U. A.F.L.-C.I.O.-C.L.C.	99
Triad-Triumph Ltd. Re USA	115

INDEX OF CASES

- Arbitration – Related Employer – Parties – Whether a trade union having a collective agreement with a sub-contractor may be a party to an application pursuant to S1(4) to have the prime contractor declared part of one employer with another corporation and bound by an existing collective agreement with another union where such declaration will effect the right of the prime contractor to use the sub-contractor.
- THE TORONTO BUILDING AND CONSTRUCTION TRADES COUNCIL v. NAPEV CONSTRUCTION LIMITED AND VEPAN LEASEHOLDS LIMITED 109
- Bargaining Rights – Reference – S96 – Whether a trade union holds bargaining rights for employees of an employer formerly a member of an employers' association with which the union signed collective agreements – S43(1).
- BAKER GURNEY & MCLAREN LTD. v. GRAPHIC ARTS INTERNATIONAL UNION, LOCAL 28-B, TORONTO 78
- Bargaining Unit – Beverage room employees – Whether employees working in hotel's banquet facilities, room service operation and night club should be included in unit.
- INTERNATIONAL BEVERAGE DISPENSERS' AND BARTENDERS' UNION, LOCAL 280, OF THE HOTEL AND RESTAURANT EMPLOYEES' AND BARTENDERS' INTERNATIONAL UNION A.F.L.-C.I.O.-C.L.C. 99
- Certification – Petition – S6(1a) – Interim certification – Petition – Where combined effect of bargaining unit dispute and petition could place applicant in a vote position – Whether the Board will determine the validity of the petition before resolving the bargaining unit dispute in order to determine whether interim certification can issue – Effect of petitioner being called into managing editor's office and being told that the editor was disturbed by the application for certification.
- KINGSTON TYPOGRAPHICAL UNION, NO. 204 v. THE INTELLIGENCER, PUBLISHED BY CANADIAN NEWSPAPERS COMPANY LIMITED 120
- Consent to Prosecute – Where Board finds Act violated whether it will exercise discretion to grant consent where applicant is pursuing arbitration remedy and other mitigating factors are present.
- LIBBY, McNEILL & LIBBY OF CANADA LIMITED v. LOCAL 107, CANADIAN UNION OF OPERATING ENGINEERS AND CLIFFORD J. SCOTT ... 102
- Discharge For Union Activity – S79(4a) – In proceeding under S79(4a) the question before the Board is whether or not the respondent was motivated by anti-union sentiment – Whether employer had knowledge of union activity – Whether such knowledge any part of reasons for dismissal – Requirement that employer to prove such matters – Effect of a period of time elapsing between date employer gains knowledge of union activity and date of dismissal.
- LOCAL UNION 2345 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL CIO CLC v. ONWARD MANUFACTURING COMPANY LIMITED 71
- Discharge For Union Activity – S79(4a) – Whether employer knowledge of the grievors organizational activity has been shown – Whether just cause for dismissing grievor has been proven.

AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA v. PRIMO IMPORTING & DISTRIBUTING CO. LIMITED	104
Duty to Bargain in Good Faith – S79 – Effect of amendments to Act in July 1975 removing limitation in S79(1) to complaints alleging that “a person” had been dealt with contrary to the Act – Effect of amendment on complaint of violation of S14 (duty to bargain) – Whether employer failed to bargain in good faith – Purpose of requiring good faith bargaining – Whether respondent required to supply existing wage and classification data – Effect of employer’s unilateral change in terms and conditions of employment while in midst of collective bargaining – Whether employer can rely on S70 to allow changes while negotiating – Effect of denying certain benefits to negotiating team – Remedial Order by Board directing employer to pay negotiating team denied benefits, to supply wage and classification data and to bargain in good faith – Whether Board may direct employer to enter into a collective agreement.	
UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) v. DEVILBISS (CANADA) LIMITED	49
Membership Evidence – Effect of chain of inquiry between signer of form 8 and actual collectors not being complete.	
UNITED STEELWORKERS OF AMERICA v. N & D SUPERMARKET LIM- ITED v. GROUP OF EMPLOYEES	112
Membership Evidence – Form 8 – Effect of inquiries not having been made of all collectors as to the propriety of the membership evidence – Requirement that there be a chain of inquiry between collector and signer of form 8.	
UNITED STEELWORKERS OF AMERICA v. TRIAD-TRIUMPH LTD	115
Parties – Arbitration – Related Employer – Whether a trade union having a collective agreement with a sub-contractor may be a party to an application pursuant to S1(4) to have the prime contractor declared part of one employer with another corporation and bound by an existing collective agreement with another union where such declaration will effect the right of the prime contractor to use the sub-contractor.	
THE TORONTO BUILDING AND CONSTRUCTION TRADES COUNCIL v. NAPEV CONSTRUCTION LIMITED AND VEPAN LEASEHOLDS LIMITED	109
Parties – Whether trade union having collective agreements with respondent for other bargaining units a proper party – Whether the Board will consider the nature of the allegations to be made in determining status as a party.	
OIL & GAS TECHNICIANS, SERVICE, DOMESTIC AND GENERAL WORK- ERS UNION, LOCAL 1267 v. NEO INDUSTRIES LIMITED	88
Petition – Certification – S6(1a) – Interim certification – Petition – Where combined effect of bargaining unit dispute and petition could place applicant in a vote position – Whether the Board will determine the validity of the petition before resolving the bargaining unit dispute in order to determine whether interim certification can issue – Effect of petitioner being called into managing editor’s office and being told that the editor was disturbed by the application for certification.	
KINGSTON TYPOGRAPHICAL UNION, NO. 204 v. THE INTELLIGENCER, PUBLISHED BY CANADIAN NEWSPAPERS COMPANY LIMITED	120

- Reference – Bargaining Rights – S96 – Whether a trade union holds bargaining rights for employees of an employer formerly a member of an employers' association with which the union signed collective agreements – S43(1).
- BAKER GURNEY & MCLAREN LTD. v. GRAPHIC ARTS INTERNATIONAL UNION, LOCAL 28-B, TORONTO 78
- Related Employer – Parties – Arbitration – Whether a trade union having a collective agreement with a sub-contractor may be a party to an application pursuant to S1(4) to have the prime contractor declared part of one employer with another corporation and bound by an existing collective agreement with another union where such declaration will effect the right of the prime contractor to use the sub-contractor.
- THE TORONTO BUILDING AND CONSTRUCTION TRADES COUNCIL v. NAPEV CONSTRUCTION LIMITED AND VEPAN LEASEHOLDS LIMITED 109
- Sale of a Business – Whether a transfer of sufficient of the enterprise to constitute a sale – Effect of predecessor company being in receivership – Effect of not purchasing Goodwill, inventories or work in progress.
- INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, AND ORNAMENTAL IRONWORKERS, LOCAL 721 v. DUFFERIN STEEL COMPANY, AWICO DIVISION 81
- S79 – Duty to Bargain in Good Faith – Effect of amendments to Act in July 1975 removing limitation in S79(1) to complaints alleging that “a person” had been dealt with contrary to the Act – Effect of amendment on complaint of violation of S14 (duty to bargain) – Whether employer failed to bargain in good faith – Purposes of requiring good faith bargaining – Whether respondent required to supply existing wage and classification data – Effect of employer's unilateral change in terms and conditions of employment while in midst of collective bargaining – Whether employer can rely on S70 to allow changes while negotiating – Effect of denying certain benefits to negotiating team – Remedial Order by Board directing employer to pay negotiating team denied benefits, to supply wage and classification data and to bargain in good faith – Whether Board may direct employer to enter into a collective agreement.
- UNITED ELECTRICAL RADIO AND MACHINE WORKERS OF AMERICA (UE) v. DEVLBISS (CANADA) LIMITED 49
- S79 – Whether grievors were laid off because of union activity – S79(4a) – Effect of employer proving downturn in business but failing to show why two employees usually kept on as part of core of skilled employees were laid off on this occasion.
- PATTERN MAKERS LEAGUE OF NORTH AMERICA, TORONTO ASSOCIATION v. MODERN PATTERN WORKS LTD. 67
- Termination – Effect of statement from employees in support of union with sufficient signatures to reduce support for Termination application to less than 45%.
- JOHN GUTE v. LOCAL 92 INTERNATIONAL MOULDERS AND ALLIED WORKERS UNION v. MITTEN INDUSTRIES GALT LIMITED ON BEHALF OF ITS AFFILIATED COMPANY, FIELD-PRICE LTD. 76

Trade Union – Status – S1(1)(n) – Effect of recent decision finding officers of the applicant to be excluded as managerial pursuant to S1(3)(b) – Effect of By-Laws expressly allowing managerial personnel into membership.

PHARMACISTS AND PROFESSIONAL EMPLOYEES UNION, LOCAL 207 v.
ARMOUR ASSOCIATES LTD.

1124-75-U United Electrical, Radio and Machine Workers of America (UE), (Complainant) v. **DeVilbiss (Canada) Limited**, (Respondent).

BEFORE: George W. Adams, Vice-Chairman, and Board Members J.D. Bell and O. Hodges.

APPEARANCES: *R. Russell and G. Stevens for the applicant; Donald McKillop, Q.C. for the respondent.*

DECISION OF THE BOARD: March 9, 1976

1. This is a complaint under section 79 of *The Labour Relations Act* and alleges that the respondent company has violated sections "14 and 32 and the Preamble". The complainant requests "an order directing the Respondent to comply with *The Labour Relations Act* in all respects, particularly section 14". The requested relief was substantially altered at the hearing and this alteration will be reviewed at a later juncture in the opinion.

2. The complainant was certified as the exclusive bargaining agent for the respondent's employees on July 14, 1975 and gave the respondent notice to bargain by letter dated July 17, 1975. The parties agreed that their first meeting would be at 5:30 p.m. on August 11, 1975 at the Holiday Inn in Barrie. The respondent arranged the meeting room and agreed to pay for it on the understanding that the applicant would pay for the following meeting. On behalf of the respondent the meeting was attended by Mr. Burt Popp, Plant Manager; Mr. Moorehouse, Manager of Production; Mr. Tom Yages, Personnel Manager; and Mr. D. McKillop, counsel to the respondent and its spokesman. On behalf of the complainant trade union the meeting was attended by Mr. Carl Ricketts; Mr. Dave Watt, Mr. Brian Murray; Ms. Deborah Gibbons; Mr. William Krafts; and Mr. George Stevens, a national representative of the complainant and the complainant's spokesman. At this meeting, which commenced at the appointed hour, the complainant presented its proposals. They were contained in a fifteen page document and covered the full range of items common to collective agreements. All of the items were in considerable detail save for the last provision entitled "Wages (Addendum)". Paragraphs (2) and (4) of this provision read:

(2) A substantial wage increase

(4) Pension Plan

It was agreed that the complainant would read its proposals and the respondent would seek clarification as required. We are satisfied that the spokesman for the respondent asked a number of questions but the effort consumed only thirty minutes. Following this exercise Mr. Stevens informed the respondent that the complainant was seeking a one year contract and he also asked to be provided with the existing wage rates and classifications of the employees. Mr. McKillop requested a caucus with the members of the respondent's committee and this resulted in a twenty minute adjournment. When the meeting was reconvened Mr. McKillop told the representatives of the complainant that the proposals were, from the management's point of view, unrealistic. He objected to the lack of specificity in the proposals, and he appeared to be particularly perturbed at the absence of a specific wage demand. He informed the complainant that under the circumstances it was the respondent's decision to apply for conciliation. He then immediately executed a form entitled "Request for Ap-

pointment of Conciliation Officer" and served it on the complainant's representatives. The meeting adjourned at approximately 6:30 p.m.

3. The complainant did not object to the respondent's request and the parties were advised that Mr. M.A. Riddell was to be the conciliation officer. Thus a second meeting between the parties was arranged for August 29th under the auspices of the conciliation officer and this meeting was also held at the Holiday Inn in Barrie, Ontario. The meeting commenced at 10:00 a.m. and Mr. Riddell asked Mr. McKillop to speak in that the respondent had requested conciliation services. Mr. McKillop began by explaining the difficulty he was having with his client as a result of an alleged unfair organizational campaign and subsequent unfair labour practice proceedings filed by the complainant. He further indicated that the respondent's attitude was understandable given the kind of literature distributed among the employees by the complainant and then he proceeded to review the content of various leaflets that the complainant had distributed prior to August 29, 1975. The Board was furnished with one such leaflet dated August 20, 1975. The leaflet contains two drawings and reads:

WHO IS BEING UNREALISTIC?

August 12th the Management of DeVilbiss accused your Committee of being unrealistic when we presented your demands to them for a collective agreement.

It is Management that is being unrealistic and by living in their ivory tower are trying to deny us working conditions that other unionized workers have had for many years.

It is only too obvious to all DeVilbiss workers that we need a union contract to protect our seniority and improve working conditions and wages.

This last layoff proves beyond a shadow of a doubt that there is no seniority protection NOW at DeVilbiss.

A number of workers, some with several years of service, were laid off and new employees kept on – some had their wage rates cut due to the Company practising favouritism.

The Company could not do this with a union to protect us.

Yes, higher wages are a must – not only do DeVilbiss workers in Toledo, Ohio get wages much higher than we do but they also received a cost-of-living adjustment on April 7th, 1975 of 50¢ per hour or \$23.20 per week on top of their already higher wages.

Management in Barrie did not institute a cost-of-living increase for us which again proves – IT PAYS TO BELONG TO THE UNION!

Management have endeavoured, in the past, to divide us and by doing so have relegated all hourly rated workers in our plant to a second class status

and it is only through being united and winning our rights through our union collective agreement can we ever hope to close the gap between our wages and those in Toledo.

DATE SET FOR CONCILIATION

The Department of Labour has set August 29th, in reply to the Company's application for conciliation.

We are prepared to work with a conciliation officer towards finding a basis for a collective agreement, even though we believe the Company should have first negotiated in good faith as provided for in the Labour Relations Act.

ISSUED BY: UE Local 542 Negotiation Committee

Aug. 20/75

Mr. McKillop then reviewed the August 11th meeting and informed the conciliation officer that the complainant's demands were incomplete. He indicated that his request for conciliation had been on a "low key" basis and that the complainant had still failed to give the respondent its position on wages. Mr. Riddell then asked Mr. Stevens to reply and Stevens indicated the complainant intended to work with the officer but first wished to ask a few questions of Mr. Moorehouse about statements Moorehouse had allegedly made to employees with regard to union dues. The questions were asked and then Stevens stated "it is time we stop playing games and get down to business to negotiate". Mr. McKillop then stood up and stated that the respondent "would not stand for this abuse" and requested the respondent's other representatives to leave with him. The meeting effectively adjourned at about 11:30 a.m.

4. On August 29, 1975 the following memorandum was posted in the plant.

TO ALL EMPLOYEES:

Management walked out of Conciliation meeting after Union accused the Management Committee of "Playing Games".

Management

And on September 19, 1975 another memorandum was posted which read:

TO ALL EMPLOYEES:

The Ontario Labour Relations Board has by a written decision dismissed the Union charges against Management.

It is obvious the Union wants to strike DeVilbiss.

The union has failed to be reasonable at the Bargaining Table, and at Conciliation, the bargaining broke down. On Friday, August 29th,

1975, the parties were advised a "No Board" report would probably be released by September 5th, 1975.

The Union "played games" by going to the Department of Labour to delay the release of the report. The Union has been using this delay to attempt to further discredit Management by more false accusations and mislead employees into signing Union cards.

We cannot change rates of pay or other working conditions until 14 days after the "No Board" report is received by the Company.

We will advise you when the report is received.

Management

5. The parties were advised that a conciliation board would not be appointed by letter from the Deputy Minister of Labour and on September 22, 1975 the complainant sent a telegram to the respondent's president, Mr. Williams, indicating that the union negotiating committee was ready and available to initiate negotiations. On this same date the complainant distributed another leaflet among the employees criticizing the company's actions and touching on a number of other miscellaneous matters. The leaflet reads:

TIME TO SET THE RECORD STRAIGHT

Management continues to try and convince us with all their memos and notes that they are Mr. Clean and that the union is playing games. This is as far from the truth as we the workers in Devilbiss are the union and have since the onset tried to abide by the intent of the law. We have tried to negotiate with the Company but management has refused to talk.

Management wants to be the pitcher, the catcher and the batter and all they are prepared to do is toss us a few flies in low wages, no seniority protection, etc.

Management stated in their memo of Sept. 19th that, "The union wants to go on strike". – The truth is that management from the very start have instituted a collision course for a strike in their efforts to keep our wages and conditions down.

Mr. Williams, in the past, stated, "My door is always open", and yet when four workers attempted to speak to him about our problem his door was closed. And our reply from Mr. Yates was "The Company lawyer has advised a meeting would not serve any useful purpose".

Management at no time has shown an honest desire to bargain, in fact, prior to our meeting with the Company on Aug. 29th, our union representative contacted the Company lawyer and asked, "If it was the intention of the Company to pay the union negotiating committee for the statutory holiday". He was assured by Mr. McKillop, the Company lawyer, that should they

work the Thursday before the holiday and request a leave of absence for the Friday, he would recommend the Company pay for the Monday. We did as requested and after the Company negotiating committee, at the insistence of the lawyer, walked out of the meeting, our committee had dinner, returned to their homes for a change of clothes and reported to work at 1:30 p.m.

Management then, once more, showed their true colours and proved their word cannot be accepted unless with a signed legal document by refusing to pay your committee for Monday Sept. 1st. (Labour Day).

NO BOARD REPORT ANYTIME

We can expect to receive a No Board report at any time. Upon receipt of which a countdown period of 14 days must expire before we the workers can decide when to legally strike. However, we feel we still have a responsibility to try and meet with management in this period to negotiate an agreement.

The true fact of the Company memo issued Sept. 19th is that the union is still signing up new members and has continued to do so since we won a democratic vote.

Why should DeVilbiss workers in Barrie be so far behind the wages paid in Toledo, Ohio. The following rates apply to jobs in Toledo; lift truck operator ... \$5.66 per hour, assembler compressor \$6.46, screw machine set-up and operate ... \$6.42.

Workers in Canadian General Electric, Mansfield Denman, Molson and others here in Barrie receive far more than we do in Devilbiss. Yet we pay the same taxes, rents, and food prices as they do.

On April 7th this year Toledo gave their workers a 58¢ cost of living. We received nothing, yet our Company gave a donation of \$50,000 to others. This alone would have given each of us a wage increase of 24¢ per hour or \$499.20 per year more pay.

It is only through a union agreement we can hope to achieve the wages, working conditions and dignity we workers in DeVilbiss are entitled to.

REPORT ON JACK SIVITER

We were unsuccessful in winning a reinstatement for Jack Siviter and we quote part of the report.

“On the facts in this case we conclude that Siviter was not discharged for his union activity. Although the conduct of the respondent is not above suspicion.” (The respondent referred to in this report is the Company)

ISSUED BY: UE LOCAL 542 Leadership Committee

6. By a memorandum bearing the same date the respondent caused the following notice to be posted.

On October 6th, 1975, the Employer will be in the position of lawfully altering rates of pay and working conditions.

The Union will be in the lawful position to strike.

Management

And this notice was followed by another leaflet from the complainant, dated September 25, 1975 which reads:

MORE FOR THE RECORD

The majority of DeVilbiss workers have proven, by the way they have conducted themselves in their union activities, to be responsible members of the community.

With wages and working conditions of DeVilbiss workers getting farther and farther behind organized workers, they lawfully organized into their own local union through a democratic secret ballot vote.

Yes, in fact, have continued to maintain a majority position, although management has endeavoured unsuccessfully to change this.

We cannot truthfully say the same credibility can be attached to management's conduct. They have continually refused to bargain in good faith and instead have done all in their power to create a strike situation.

After certification, our members drafted and ratified the union proposals. Your negotiating committee presented them to management on Aug. 11th; yet, Sept. 19th the following notice was posted and signed by management, "The union failed to be reasonable at the bargaining table and at Conciliation, the bargaining broke down".

This is an irresponsible statement by management representatives as "to bargain" means, "An agreement to exchange, haggle, to discuss or dispute terms", and the Company has not made one counter proposal to our union submission.

When our proposals were presented to management representatives, they in turn gave us an application for Conciliation.

Remember, management applied for Conciliation and when we met Aug. 29th, it was obvious to your committee that the Company representatives appeared at the meeting with the sole intention of walking out – they fooled no one. They did not intend bargaining in good faith.

Sept. 22nd a notice was posted by the Company stating, "On Oct. 6th the employer will be in the position of lawfully altering rates of pay and working conditions".

This is another attempt in their effort to deceive the workers, by trying to negotiate over the heads of your elected negotiating committee.

We must remember, without a union agreement, the Company can cut your pay, lay you off out of line of seniority, and deny you what few benefits you now have.

Do not be fooled by this propaganda – the Company has had many months, prior to the workers organizing into the union, to give decent wage increases, cost-of-living adjustments, etc. Why are they now deciding they can do this after Oct. 6th.

EXTRA!! READ CAREFULLY

Section 70 (1) of the Labour Relations Act reads in part, "Where notice has been given under Section 13 or Section 45 and no collective agreement is in operation, no employer shall, except with the consent of the trade union, alter the rates of wages or any other term or condition of employment ..."

We the UE union want both the Company and the workers to know that we the certified union at DeVilbiss hereby formally give our "consent" to the Company to increase wages IMMEDIATELY as much as possible for all workers at DeVilbiss.

Signed,

"Geo. Stevens/SM"

Geo. Stevens,

on behalf of

U.E.R. & M.W.A. (UE).

PROMISES, PROMISES, PROMISES do not help you to pay the bills, educate your children or pay the rent or mortgage. You can only make promises count when they are written in the union agreement.

The following telegram was sent to Mr. Williams on Sept. 22nd and, although management has been in the habit of giving memos or posting notices, we note that no mention of this was made on this bulletin:

FR TO

MR. WILLIAMS, PRESIDENT DEVILBISS BARRIE ONT
BT

NO BOARD REPORT RECEIVED TODAY. ADVISED BY
LEADERSHIP COMMITTEE TO NOTIFY YOUR UNION
NEGOTIATION COMMITTEE READY AND AVAILABLE
TO RESUME NEGOTIATIONS.

PLEASE ADVISE AT EARLIEST CONVENIENCE
GEORGE STEVENS UE NATIONAL REP

MB

UEW 178 DUNLOP ST WEST BARRIE ONT 726-1552

UNITED WE WIN -

DIVIDED WE FALL

ISSUED BY: UE Local 542

Sept. 25/75

Leadership Committee

178 Dunlop St. West Barrie

726-1552

During the latter part of September the Complainant attempted to seek mediation services from the Ministry and by telegrams dated September 29, 1975 and October 3, 1975 Mr. T.R. Smith, a mediator with the Ministry, advised the parties that he wished to meet with them on October 7th, 1975 in Toronto. The respondent admitted that it received Mr. Smith's telegram and further admitted that it did not attend the meeting. Representatives of the complainant did attend in that the respondent failed to advise anyone of its intention to ignore Mr. Smith's request.

7. The complainant admitted that after October 7th it distributed two additional leaflets. One was dated October 9, 1975 and reads:

CONTEMPT

Once again management has shown nothing but contempt for its workers and the Labour Laws of the Province of Ontario by refusing to attend a meeting called by the Ministry of Labour Mediation Services.

Management has continued to try and divide the workers, believing, no doubt, in the old saying "divide and conquer", and by so doing have continued to maintain wages and conditions below the organized section of the same industry.

In its usual dictatorial way and refusing to permit any discussion from the employees, last Friday, the Company, in panic and fear of the union, gave the largest increase ever in the past fourteen years.

Just think how much more could be won by DeVilbiss employees should the workers have complete unity.

It is no secret to the workers, that this increase and change in benefits, although far short of what should be given out, was only as a result of the majority of the workers voting for the union.

Wages given out like this can be taken back the same way by management unless you have a union contract to protect your seniority, wages and working conditions.

Surely, we do not need to look far to see what management thinks of its workers. On Friday September 25th, at a panel discussion, a Mr. Ambler of the Ontario Manufacturers Association, an organization of which Mr. Williams is Past President, in his address about students stated, "They have to realize that the employers don't give a good goddamn whether they're alive or dead", he said, "Most people coming to work are too lazy and that's got nothing to do with the educational system". (The above quotation was taken from the Barrie Examiner.)

We must remember that the Manufacturers Association is nothing more than a union of the bosses to promote their own self interests. Yet the people who produce their products and make a profit for them are told, "Most people coming to work are too lazy".

Management should realize they are not above the law. They have a responsibility to meet and bargain in good faith with the negotiating committee of UE which is the legal bargaining agent for DeVilbiss workers in Barrie.

At the meeting called last Sunday, the DeVilbiss workers who attended approved the proposition that the UE do everything in its power to publicize the issues and tell every citizen in the town of Barrie and beyond of these high handed methods used by this foreign owned Company in its efforts to deny workers their rights under the law and expose its anti-worker policy.

We shall take whatever methods necessary to force this Company to abide by the law and face up to its responsibility to negotiate in good faith for a collective agreement to protect the wages and working conditions of DeVilbiss workers.

ISSUED BY: Leadership Committee
UE Local 542

Oct. 9/75

The other, dated October 31, 1975, primarily emphasized the fact that this particular unfair labour practice had been filed against the respondent. It is also of note that Mr. George Stevens admitted that he had called the local newspaper about the proceedings and this contact appears to have caused at least two newspaper reports on the charges – reports containing numerous allegations against the respondent by Mr. Stevens.

7. The last factual matter we wish to consider is a meeting of employees called by the company at 3:30 p.m. on Friday, October 3, 1975. The meeting was held in the lunch-room and attended by Mr. Popp, Mr. Moorehouse, and Mr. Williams, on behalf of the respondent. Williams stated that he had an important announcement; that no questions would be allowed; and that if anybody did not agree [with this proposed format, supposedly] they should leave. Papers and pencils were then given to all of the employees. Williams told the employees that hard feelings had been created but that all was going to be changed because as of Monday morning "there was going to be a whole new ball game". While he thought he had been harrassed by the union, he indicated that all would be forgiven and forgotten and proceeded to tear up a few of the complainant's leaflets, reproduced above. He then stated that Mr. Popp, the plant manager, would tell the employees "what the whole new ball game was going to be". Popp then introduced what was referred to as a "ten point program"] a program to be effective the next Monday. The ten points were:

- a. A \$75 allowance for those people who had worked for the respondent from December 1974, and a pro-rated percentage of the allowance for other employees, *provided that each employee worked the full week commencing on the next immediate Monday.* [emphasis added]
2. An extra half holiday at Christmas.
3. A floating holiday in 1976 period.
4. A change in vacation pay.
5. An increase in the work boot allowance.
6. Employer to assume 100% of medical benefit premiums.
7. An increase in sick pay benefit.
8. A cost-of-living allowance, to commence on January 1, 1976.
9. Mr. Popp announced each employee's existing wage rate and then a new wage rate for the employee.
10. A five minute wash-up per each half shift.

Mr. Earl Ricketts, an employee with thirteen years of service with the respondent, informed the Board that he worked every day in the following week except for October 7, 1975 when, as a member of the union negotiating committee, he met with Mr. Smith, the Ministry mediator. And apparently, as a result of his failure to work on the 7th, he failed to meet the precondition attached to the \$75 allowance. Thus he did not receive the allowance and presumably no other employee meeting with Mr. Smith did either. Ricketts also told the Board that members of the union negotiating committee did not receive any holiday pay for Labour Day because on August 29th (the work day immediately preceding the holiday) they attended the negotiation meeting called by conciliator Riddell. The meeting adjourned at 11:20 a.m. as a result of the respondent's withdrawal and it took until 1:30 p.m. for the employees to return to work in that clothing had to be changed and lunch consumed.

8. We note that the respondent chose not to adduce any evidence and thus our findings are based on an assessment of the complainant's witnesses.

9. In the light of these facts, and relying upon the principles enunciated in *R. v. Davidson Rubber Co. Inc.* (1969) 69 CLLC – 14,190 (Ont. Prov. Ct.), the complainant submitted that the Board should find that the respondent has failed “to bargain in good faith and make every reasonable effort to make a collective agreement”. The complainant reviewed the facts and in asserting that the respondent has attempted to circumvent and undermine the trade union it emphasized the implementation of the ten point program (all matters that had not been offered to the trade union); the respondent's conduct at meetings that did occur; and the respondent's failure to attend the meeting of October 7th, 1975. The complainant suggested that the respondent draws its motivation from the very close results of the representation vote in July. The complainant also asserted that its own conduct had been consistent with the custom of collective bargaining and that it gave the respondent no cause for acting as it did.

Having reviewed the substantive justification for its complaint, the complainant requested that the respondent be directed to sign a collective agreement having a term of one year and embracing the terms of employment it announced in October as well as “the other necessary clauses common to all collective agreements” (i.e., recognition, grievance procedure and statutory arbitration clause; statutory dues deduction on a voluntary basis). It argued that the Board had such power given the wording of section 79(4)(b) which reads in part:

... where the Board is satisfied that an employer has acted contrary to this Act it shall determine what, if anything, the employer shall do or refrain from doing with respect thereto and such determination, without limiting the generality of the foregoing, may include ... any one or more of,

(b) an order directing the employer ... to rectify the act or acts complained of;

Alternatively, the complainant requested that the respondent's conduct be censured; that it be directed to meet with the complainant and to bargain in good faith; and that the Board retain jurisdiction to monitor the progress of the negotiations.

10. The respondent denied that it had violated the Act. It noted that the complainant had not objected to its request for conciliation services. It stressed that when the complainant should have been bargaining it was attacking the respondent's integrity and thereby created an atmosphere that made it impossible for the respondent to meet with the complainant. The respondent reviewed a number of cases including *New Method Laundry & Dry Cleaners*, *Raymond Williams & H. LeRoy Smith* [1957] 57 CLLC ¶18,059 (OLRB) and *Superior Box Co. Ltd.* (1961) 61 CLLC ¶16,189 (OLRB). It submitted that in law there was no need for fruitless marathon negotiations. It also submitted that it was under no obligation to meet with the complainant until either it altered its position or the respondent received the requested information with respect to the wages and the pension demand. It was further argued that there was no evidence that the complainant needed the existing wage and job classification information to make a specific monetary demand and, more importantly, this information was never formally requested after the first meeting in August in

any event. In effect, the respondent took the position that an impasse had been reached as a result of its request for a specific wage demand and the complainant's failure to respond.

11. In neglecting to attend the meeting convened by mediator Smith the respondent admitted that it shouldered an onus to explain its absence. And in this regard the respondent relied upon the wording of section 16 of the Act in arguing that mediation is a voluntary process requiring the joint request "in writing" of the parties. It took the position that it did not request Smith's intervention and thus it was not obligated to attend any meeting he convened.

12. This complaint is one of the first that has been filed by a trade union under the recently amended section 79 alleging a violation of section 14. Prior to the amendment it had been held that a trade union could not file a section 79 complaint on its own behalf, in contrast to a complaint filed on behalf of an individual grievor, in that section 79 referred to complaints alleging "a person" had been dealt with contrary to the Act. (See *Rapid Type Setting Co. Ltd.* [1972] OLRB Rep. July 138.) A trade union is not a legal entity in the province of Ontario. (See *Nipissing Hotel Ltd. v. Hotel and Restaurant Employees and Bartenders International Union* (1963) 38 D.L.R. (2d) 675 (Ont. H.C.).) And thus to the extent that the term "person" refers to a legal entity its meaning does not embrace a trade union. Secondly, *The Interpretation Act*, R.S.O. 1970, c. 225, s. 30(28) defines "person" as including "a corporation..." and makes no reference to a trade union. And finally, sections similar to section 61 of *The Labour Relations Act*, wherein references to both persons and trade union are found, evidence a legislative intent that the term "person" does not embrace a trade union.

However, section 79 was recently amended to read, in part:

79-(1) The Board may authorize a labour relations officer to inquire into
any complaint alleging a contravention of this Act. [emphasis added]

Clearly the section is not now limited to complaints that pertain only to persons but rather the section makes reference to "any complaint alleging a contravention of this Act". Thus the legislature has reposed more extensive authority in the Board in an effort to assist this agency in the execution of its responsibilities in the Ontario industrial relations system. The amendment would appear to recognize that both employers and trade unions ought to at least have the opportunity of direct access to the Board's expertise and remedial authority instead of being required to enforce their respective rights exclusively by way of a punitive action before the Provincial Court. (An interesting empirical analysis of unfair labour practice complaints that can be said to support this amendment is Christie and Gorsky, *Unfair Labour Practices* (Task Force Study No. 10, Canada, 1969).) In fact this amendment is of particular importance where an alleged violation of section 14 is at issue. Prior to the amendment of section 79 a party was obligated to seek the Board's consent to institute a prosecution against an alleged violation. If successful before the Board the complainant then had to pursue its complaint before the provincial Court and such a complaint is quite obviously out of the mainstream of matters that the provincial Court concerns itself with from day to day. Thus complainants were forced to process their complaints before a tribunal that is relatively unfamiliar with labour relations disputes. Moreover, in the provincial Court parties are subject to all the rules of evidence which make it necessary that counsel be retained and these same rules of evidence may impede the industrial relations considera-

tions of the complaint from coming to light. However, even if the complainant is successful in the Provincial Court, the Court's remedial authority is limited to the imposition of a fine. On the other hand, the labour relations board's remedial authority embraces both injunctive-like remedies as well as the power to order affirmative action "to rectify" acts complained of. (See *Tomko v. Labour Relations Board (Nova Scotia, et al)* Supreme Court of Canada, December 19, 1975.) Thus, while the power to fine may be of some use in the enforcement of the Act (and therefore the fining authority has been left with the provincial Court) the recent amendments substantially add to the remedial avenues open to the parties. (For a useful outline and assessment of the National Labour Relations Board's remedial authority, particularly with regard to section 8(a)(5) of the *National Labour Relations Act*, see Ross, *Analysis of Administrative Process Under Taft-Hartley* (1966) *Lab. Rel. Yearbook* 299 (B.N.A.) Gross, Cullen, Hanslowe, *Good Faith in Labour Negotiations: Tests and Remedies* (1968), 53 *Cornell L. Rev.* 1009; McCulloch, *Past, Present and Future Remedies Under Section 8(a)(5) of the NLRA* (1968), 19 *Lab. L.J.* 131; Note, *The Need for Creative Orders Under Section 10(c) of The National Labour Relations Act* (1963-64) 112 *U. Pa. L. Rev.* 69.)

13. This introduction then brings us to the substantive problem at hand which is an alleged failure to bargain in good faith. That part of the complainant's claim based upon section 32 will not be considered. Section 32, given its wording, does not provide any party with an enforceable right but rather is a directive to and mandate for a mediator, properly appointed under the legislation. Accordingly, this complaint is solely concerned with the meaning of section 14. The section reads:

14. The parties shall meet within fifteen days from the giving of the notice or within such further period as the parties agree upon and they shall bargain in good faith and make every reasonable effort to make a collective agreement.

The section imposes an obligation upon both employers and trade unions to enter into serious discussion with the shared intent to enter into a collective bargaining agreement. Once a trade union is certified as the exclusive bargaining agent of employees within an appropriate bargaining unit the employer of those employees must accept that status of the trade union. It cannot enter into negotiations with a view to ridding itself of the trade union. And thus it can be said that the parties are obligated to have at least one common objective – that of entering into a collective agreement and section 14 is intended to convey this obligation. But this is not to say that they will or are obligated to have common objectives with respect to the contents of any collective agreement they might enter into. The legislation is based upon the premise that the parties are best able to fashion the law that is to govern the work place and that the terms of an agreement are most acceptable when the parties who live under them have played the primary roles in their enactment. In short, the legislation is based upon the notion of voluntarism and reflected in the many administrative and judicial pronouncements that neither trade union nor employer is, by virtue of the bargaining duty, obligated to agree to any particular provision or proposal. Therefore, while they must share the common objective to enter a collective agreement, the legislation envisages that they have differences with respect to just what the content of that agreement should be and those differences may force the parties to have recourse to economic sanctions.

14. But the preceding observations demonstrate that a very important function of section 14 is that of reinforcing an employer's obligation to recognize a trade union lawfully selected by employees as their bargaining agent. Certainly the freedom to join a trade union of one's choice declared in section 3 of the legislation would be but an edict "writ on water" if an employer could enter into negotiations with no intention of ever signing a collective agreement. But we believe the duty to meet and make every reasonable effort to make a collective agreement has an even more important function in a modern society that for the most part accepts that trade unions have legitimate and important roles to play. That is to say that the duty assumes that when two parties are obligated to meet each other periodically and rationally discuss their mutual problems in a way that satisfies the phrase "make every reasonable effort", they are likely to arrive at a better understanding of each other's concerns thereby enhancing the potential for a resolution of their differences without recourse to economic sanctions – the impact of which is never confined to the immediate parties of an industrial dispute. At the very least rational discussion is likely to minimize the number of problems the parties are unable to resolve without the use of economic weapons thereby focusing the parties' attention in the eleventh hour on the "true" differences between them. Some American commentators have suggested that this second purpose of the duty is, at least, obscure. For example, Archibald Cox has written:

Although there is little doubt that the sponsors of the *Wagner Act* hoped that the statute would accomplish all four purposes, only the first two can be said to have been written into law. There is no real evidence whether the sponsors intended to write the third and fourth directly into the statute or counted upon time and human nature to realize these objectives. Collective bargaining is curiously ambivalent even today. In one aspect collective bargaining is a brute contest of economic power somewhat masked by polite manners and voluminous statistics. As the relations matures, Lilliputian bonds control the opposing concentrations effective to contain the use of power. Initially it may be only fear of the economic consequences of disagreement that turns the parties to facts, reason, a sense of responsibility, a responsiveness to government and public opinion, and moral principle; but in time these forces generate their own compulsions, and negotiating a contract approaches the ideal of informed persuasion.

The purpose of the original *Wagner Act* was to create a necessary balance of economic power. The act also aimed at ideal bargaining. It intruded at least so far as to protect unionization from interference by employers to compel them to recognize the employees' representatives. Did the statute leave the further consequences to develop without government regulation or did it legislate some of the state of mind and habits of conduct which make up the ideal bargaining relation? (Cox, *The Duty to Bargain in Good Faith* (1958) 71 Harv. L. Rev. 1401 at 1409.)

In response, we note that there are marked differences in wording between the relevant American and Ontario provisions. Section 8(a)(5) and section 8(d) of the *Wagner Act* require the parties "to meet at reasonable times and confer in good faith" but make no reference to "reasonable efforts". Moreover, the American legislation specifically provides that neither party is compelled to agree to a proposal or to make a concession.

But more importantly, the actual experience before the National Labour Relations Board can only be explained by reference to a Board concern for both purposes of the duty. (See Wellington, *Freedom of Contract and The Collective Bargaining Agreement* (1964) 112 U. Pa. L. Rev. 467; Bartosic and Hartley, *The Employer's Duty To Supply Information To The Union: A Study of The Interplay and Judicial Rationalization* (1972) 58 Cornell L. Rev. 23.)

15. Hence it is our belief that the duty described in section 14 has at least two principle functions. The duty reinforces the obligation of an employer to recognize the bargaining agent and, beyond this somewhat primitive though important purpose, it can be said that the duty is intended to foster rational, informed discussion thereby minimizing the potential for "unnecessary" industrial conflict.

However, while the purposes underlying section 14 are not terribly difficult to articulate, the legal content of the duty is another matter. The specific requirements of the duty are hard to formulate in the abstract. For example, if section 14 censures efforts designed at avoiding collective agreements or unreasonable actions impeding rational discussion, a tribunal must have the impugned conduct before it and an assessment must then be made. In other words, the legal standard found in section 14 is so broad substantial elaboration on a case by case basis will be required before sufficient certainty and predictability can be achieved. And even then the duty will not be capable of summation in a single sentence or paragraph. But this should not be surprising. Jurisprudential elaboration is the essence of the Board's function as is witnessed by its approach in defining the appropriate bargaining unit, for example. But much insight can be gained from understanding the purposes underlying the duty and it is important to note that the standard is not a recently enacted one (only the remedial authority of the Board is new). Thus some of the experience before the Provincial Court as well as the approach taken by the National Labour Relations Board in the United States will be of considerable assistance to both this Board and the parties who appear before it.

16. In the facts at hand a number of actions of the employer give us cause for concern and indicate to us that it is neither bargaining in good faith nor making reasonable efforts at achieving a collective agreement with the union. In fact our conclusion is reinforced when these separate actions are viewed in their totality. At the very first meeting with the trade union and after thirty minutes of discussion the respondent concluded that discussions without the aid of a conciliator were pointless. The union's proposal was characterized as incomplete and unrealistic with no counter-proposal in the unrealistic area being made and no explanation of why an incomplete monetary demand should preclude discussions on the complete non-monetary proposals made by the complainant. Of additional concern is the respondent's failure to respond to the complainant's request at this first meeting for existing wage and classification information. Particularly in "first agreement" situations, it is little wonder that a complainant would have an incomplete monetary demand until it fully appreciated the current rate of wages paid by a respondent and the detailed nature of its job structure. Rational and informed discussion cannot easily take place until this information is provided to a trade union and thus this aspect of the duty supports its production. As a general matter of policy, if parties are to engage in economic conflict their differences ought to be real and well-defined. It is patently silly to have a trade union "in the dark" with respect to the fairness of an employer's offer because it has insufficient information to appreciate fully the offer's significance to those in the bargaining unit. Moreover, a trade union

has a duty to all of the employees in the bargaining unit and thus has to be concerned, in a large measure, with equality of treatment. (For the American experience in this area see *J.H. Allison & Co.* (1946) 70 NLRB 377; *Whitin Machine Works* (1954), 217 F. 2d 593 (4th Cir.); *Aluminum Ore Co* (1942), 131 F. Cir.; *Yanman & Erbe Manufacturing Co.* (1951) 181 F. 2d 947 (2nd Cir.); *Truitt Manufacturing Co.* (1954) 110 NLRB 856; and see generally Bor-tosic and Hartley, *supra*.) Further, in the facts at hand, we have no doubt, when the totality of the respondent's conduct is considered, that the "bad faith" aspect of the duty also effectively characterizes the respondent's failure in this regard. But, as noted above, a finding of bad faith is not a prerequisite to a finding that section 14 has been violated.

17. Another concern is the respondent's unilateral change in the terms and conditions of employment while it was in the midst of collective negotiations with the complainant. From the outset, as evidenced by its memoranda of September 19th and 22nd, the respondent began to emphasize its "right" to alter the terms and conditions of employment after the expiration of the fourteen day period provided for in section 70. We put the word "right" in quotation marks because section 70 must be integrated with the policy and wording of section 14 and section 7. The trade union is the exclusive bargaining agent for the employees in the bargaining unit. And thus the employer cannot, as a general rule, deal directly with his employees with respect to their terms and conditions of employment. (See *Le Syndicat Catholique des Employes de Magasins de Quebec Inc. v. La Compagnie Paquet Ltee* (1959) 18 DLR (2d) 346 (SCC); *J. I. Case Co. v. NLRB* (1944) 321 U.S. 332.) He must respond to such issues through the officially designated bargaining agent. When an employer, while negotiating with a trade union, implements new conditions of employment that have not even been first proposed to the trade union, the inference logically arises that the tactic is designed to undermine the status of the trade union – amounting to a suggestion that beneficial terms and conditions of employment do not require the presence of the bargaining agent. (See *NLRB v. Reed & Prince Mfg. Co.* 205 F. 2d 131 (1st Cir.); Cert. denied (1953) 346, U.S. 887; *NLRB v. Katz* (1962), 369 U.S. 736.) Professor Cox (*supra*, at 1423) commented on the problem in the following manner:

(2) Unilateral action yields to much the same analysis. When taken during negotiations or upon subjects on which the union wishes to bargain it weakens the union by showing the employees that it is useless to try to negotiate. If the employer unilaterally raises wages or makes some other concession, his conduct effectively tells the employees that without collective bargaining they can secure advantages as great, or possibly greater than, those the union can secure. Unilateral changes made while the employees' representative is seeking to bargain also interfere with the normal course of negotiations by weakening the union's bargaining position. Consequently, proof that an employer changed wage rates or other terms of employment in the midst of contract negotiations ordinarily gives rise to the inference that he had no intention of coming to an agreement; the factual inference can be negated by showing that there is a need for immediate action or by proving that the negotiations had reached an impasse.

In other words, if section 70 was read and applied in a literal fashion, an employer could use the freedom thus found to avoid his statutory duty to recognize a trade union and bargain in good faith. Therefore, it is our opinion that section 70 is designed to provide the employer with freedom to alter the terms and conditions of employment when negotiations have

reached an impasse (although even then, while possessing a somewhat different content, the bargaining duty applies (see *New Method Laundry & Dry Cleaners* (1957) 57 CLLC ¶18,059) or where there is a *bona fide* business reason for such immediate action. (See *NLRB v. Reed & Prince Mfg. Co.*, *supra*.) In the facts at hand, the parties were nowhere near the kind of impasse that would permit the respondent to rely upon section 70(2). It could be argued that the trade union's leaflet of September 25, 1975 wherein it invited the respondent to alter the terms of employment estoppes it from now contesting such action but we find, as a result of its memoranda of September 19th and 22nd, that the respondent intended to engage in such actions well before the trade union responded as it did on September 25, 1975. Moreover, the respondent called no witnesses to establish that it detrimentally relied on the September 25, 1975 leaflet.

18. We are also concerned over the respondent's failure to respond to the complainant's request on September 22nd that negotiations resume and its failure to attend at the meeting arranged by the mediator, Mr. T. Smith. Whether Mr. Smith was a properly appointed mediator or not, the respondent did not inform the complainant or Mr. Smith that it objected to meeting on this ground nor did it suggest that it would meet with the complainant without Mr. Smith in attendance. Instead, it remained silent and then refused to pay the \$75 allowance to those employees on the complainant's negotiating committee because they thereby failed to work the full week. We find the condition attached to the \$75 was a patent tactic aimed at subverting employee participation on the day Smith designated for the meeting. No one on behalf of the respondent gave evidence before the Board why Smith's presence would prejudice the negotiations or why none of the respondent's representatives were available if something other than a technical objection to Smith's presence was at issue.

19. Finally, not only do we find that the respondent's failure to pay the union negotiating committee members the \$75 allowance was part of a scheme to undermine the negotiations, the totality of the evidence establishes that its failure to pay these same people their holiday pay was a part of this same scheme. Qualifying days for holidays are aimed at discouraging a more extensive holiday than an employee has a contractual right to but none of the employees in question could be said to come within this purpose. And while it could be said that an employer is entitled to administer such a provision as he sees fit, such discretion cannot override the provisions of *The Labour Relations Act*. For example, while an employee can be lawfully dismissed for refusing to work, if the real reason for the employee's dismissal is based upon an anti-union animus the dismissal becomes unlawful. (See *Fielding Lumber Company Ltd.* [1975] OLRB Rep. Sept. 655.)

20. In his cross-examination of the witnesses, counsel to the respondent was careful to adduce the complainant's leaflets and argued that the material was so inflammatory as to justify the respondent's actions. We cannot accept this position. The material was, in our opinion, neither defamatory nor intentionally false. Moreover, collective bargaining negotiations are often emotionally charged. To a large degree, both trade unions and employers must work with personalities and particular individual dispositions as they find them and cannot focus on such considerations as reasons for refusing to bargain. If it were otherwise the Board would become the arbiter of the interpersonal disputes between the bargaining representatives. Similarly, this Board does not want to become a censor of communications between a trade union and its constituency save for egregious situations that are aimed at undermining collective negotiations. (A similar ruling was rendered in favour of certain em-

ployer communications in *Fruehauf Trailer Company of Canada Limited* [1975] OLRB Rep. Jan. 77 ¶14.) Moreover, in the facts at hand, the respondent's representative also appeared to be "upset" over incidents that were quite collateral to the negotiations such as the organizational campaign and an unfair labour practice proceeding. If these incidents and the emotions said to be inflamed by them could be reason for failing to negotiate, collective bargaining negotiations would seldom "get off the ground". Further, it would be almost impossible for the board to distinguish true emotional trauma induced by such incidents from "trauma" induced by the certification of the trade union.

21. We therefore conclude that the respondent has failed to bargain in good faith and make every reasonable effort to make a collective agreement.

22. This brings us to the issue of remedy. Before dealing with the complainant's request that the respondent be directed to sign a collective agreement embodying the current terms of employment along with such other terms as this Board considers necessary and just, we first wish to direct the respondent to pay both the holiday pay and the seventy five dollar allowance to those employees who were denied the benefits by reason of their involvement in the negotiations. We have concluded that the respondent's actions in this regard were unlawful and section 79 empowers the Board "to rectify the act or acts complained of...". We further direct the respondent to provide the complainant with the wage data it requested at the outset of the negotiations in that its actions in this regard have also been found to be in breach of section 14.

23. As for the complainant's request that the respondent be directed to enter into a collective agreement, we have serious reservations that it is the appropriate remedy in the circumstances. We would first note that the United States Supreme Court has told the National Labour Relations Board that it does not possess the power to impose such a remedy. (See *H.K. Porter Company Inc. v. NLRB* (1970) 62 L.C. ¶10,696.) While the facts at hand might be distinguished from *H.K. Porter* on the basis that here the trade union is asking for little more than the employer unilaterally implemented during the negotiations in breach of the Act and the wording of section 8(d) of the *Wagner Act* is much more specific with regard to the parameters of the bargaining duty, this Board cannot ignore the fact that labour relations in the private sector has, for the most part, been based upon a concept of voluntarism or freedom of contract. For this reason - a reason that figured prominently in the *H.K. Porter* decision - we have doubts that the Board possesses the authority to respond to this particular request of the complainant. However, it is unnecessary to finally resolve this issue because we believe that in the circumstances the parties are quite capable of arriving at their own agreement provided the employer immediately commences to bargain in good faith and makes all reasonable efforts in the direction of making a collective agreement. If the complainant is satisfied with the terms that the respondent recently implemented, bargaining can be narrowed to the few outstanding issues that remain. Accordingly, we direct the respondent to begin to bargain in good faith and make all reasonable efforts to make a collective agreement with the trade union. And in this regard, we also direct the respondent to commence negotiations by arranging to meet with the complainant within a reasonable period of time from the release of this judgment. There is no need for the Board to retain jurisdiction over this matter in that a subsequent failure to bargain in good faith would amount to non-compliance with our direction. Upon following the appropriate procedure (see *USW and Chairtex Manufacturing Ltd. et al* [1971] 3 O.R. 154), such non-compliance would cause the Board to file a copy of this determination in the office of the Registrar of the Supreme

Court "Whereupon the determination shall be entered in the same way as a judgment in order of that Court and is enforceable as such".

1356-75-U Pattern Makers League of North America, Toronto Association, (Complainant) v. **Modern Pattern Works Ltd.**, (Respondent).

BEFORE: Kevin M. Burkett, Vice-Chairman, and Board Members J.D. Bell and D.B. Archer.

APPEARANCES: *Ian Springate, Paul Storrie and Remo Cosolo for the applicant; Harry Freedman and H.B. Hartshorn for the respondent.*

DECISION OF KEVIN M. BURKETT AND D.B. ARCHER: February 27, 1976

1. This is a complaint under section 79 of the Act in which the complainant alleges that the grievors have been dealt with contrary to sections 56 and 58 of the Act.

2. The evidence before the Board establishes that between October 16, 1975 and November 20, 1975 the respondent employer laid-off seven (7) employees. *Mr. G. Vella*, an unskilled metal worker with 8 months service was laid-off on October 16, 1975. *Mr. J. Palmer* a journeyman pattern-maker specializing in wood was laid-off on November 14, 1975. He is by the account of *Mr. G. Ward*, the shop foreman, an unreliable worker who "has never drawn forty hours pay" in his 10 year association with the company. *Mr. M. Joyner*, a metal worker with 4 months service with the company was also laid-off on November 14, 1975. *Mr. Ward* stated that he was first hired in August of 1975 under "false pretences," in that he claimed to be a tool-maker. *Mr. R. Kratochwil*, a journeyman pattern-maker specializing in wood who has been associated with the company for approximately 10 years but with less than one year of continuous service, having taken a nine month leave of absence to return to Europe, was laid-off on November 19, 1975. *Mr. J. Wiatt*, a journeyman pattern-maker specializing in wood who had one month's service with the company was laid-off on November 20, 1975. *Mr. R. Cosolo*, a journeyman pattern-maker specializing in metal with some experience in both wood and plastic lay-ups has 12 years service with the company although he has taken leaves of absence in this period, was also laid-off on November 20, 1975. *Mr. P. Storrie* a journeyman pattern-maker specializing in metal with some minimal experience in wood who had 8 years of uninterrupted service with the company was also laid-off on November 20, 1975.

3. The evidence discloses that the grievors, *Mr. R. Cosolo* and *Mr. P. Storrie*, were active in attempting to secure bargaining rights for the shop employees of the respondent on behalf of the complainant union. They filed an application for certification in April of 1975 which was signed by Messrs. Storrie and Cosolo, the financial secretary and president respectively and in addition by *Mr. A. Capon* and *Mr. H. Meier*. This application was subsequently withdrawn but a new application was filed in September, 1975 when the company refused to recognize the bargaining rights flowing from a 1946 certificate. This application was in turn withdrawn and a third application was prepared with the assistance of legal

counsel and was filed in December of 1975. The two witnesses for the respondent were aware of the union activity of the four persons who signed the April certification application from the time the notice of that application was posted.

4. The evidence establishes that Mr. *Kratochwil* was advised to return to work on November 25, 1975 and began work at 7:45 a.m. on November 26, 1975; that Mr. *Palmer* was advised to return to work on November 26, 1975 and commenced work at 8:06 a.m. on November 27, 1975, and that Mr. *Wiatt* commenced work at 12:38 p.m. on November 28, 1975. These three persons were assigned wood-set-up work which had been awarded to the company. Mr. *Storrie* visited the company premises on November 26, the day of Mr. *Palmer's* recall, and was told by company officials that there was no work available. The company then attempted to contact Mr. *Storrie* on November 29, 1975 in order to ask him to return to work on Monday, December 1, 1975 and the company contacted Mr. *Cosolo* on December 2, 1975 and asked him to return to work on December 3, 1975. Mr. *Storrie* did not return having secured alternate employment and Mr. *Cosolo* asked that he be given an extra day. He returned to work at 7:56 a.m. on December 4, 1975. Mr. *Joyner* was contacted on December 2, 1975 and returned to work on December 3, 1975 and Mr. *Vella* has not been asked to return.

5. The evidence establishes that although the employer does not have a lay-off policy as such, its past practice in this regard is to maintain a core of skilled workers who are augmented as the need arises. Mr. A. Capon, a journeyman pattern-maker employed by the respondent for 7 years who appeared on behalf of the complainant, testified that even when there was no pattern-making work the skilled core, of which he was one, was kept doing maintenance work and was engaged in making tools to increase productivity. It was his uncontradicted evidence that Mr. *Cosolo* had been a part of the core group for at least two years. Mr. *Storrie* who had never been laid-off in his 8 years with the company was also one of the core group.

6. Both of the witnesses called by the respondent, Mr. Ward the shop foreman and Mr. Hartshorn the president, testified that there was a downturn in the company's business during late October and November. Mr. Ward referred to it as "severe". Mr. Hartshorn stated that at the time of the lay-offs, "the metal pattern part of the business petered out." The witnesses for the complainant were in basic agreement with those of the respondent, acknowledging the business downturn and the paucity of metal pattern-making work. Mr. *Storrie* while acknowledging that the lay-off was the most severe he had witnessed, testified with respect to the level of business activity that November of last year "was just as slow as in previous years when the core workers were kept on."

7. The effect of section 79(4a) which was incorporated into the Labour Relations Act by an amendment which became effective on July 18, 1975 is to cast upon the respondent employer the burden of proving, on the balance of probability, that it did not act contrary to the Act as alleged in a complaint under section 79(4). The Board stated in the recent *The Corporation of the City of London* case, Board File No. 1308-75-R, dated January 9, 1976 at paragraph 14:

"The effect of the reversal of the onus as embodied in section 79(4) has been well stated in the *Barrie Examiner* case, dated October 6, 1975, Board File 0597-75-U wherein the Board stated:

‘Given the requirement that there be absolutely no anti-union motive, the effect of the reversal of the onus of proof is to require the employer to establish two fundamental facts – first, that the reasons given for the discharge are the only reasons, and second, that these reasons are not tainted by any anti-union motive. Both elements must be established on the balance of probabilities in order for the employer to establish that no violation of the act has occurred.’

Simply put, the respondent must put forward a credible explanation free from anti-union motive which is established on the balance of probabilities as the only reason or reasons which precipitated the impugned activity. The Board has also stated that:

‘...in assessing an employer’s declared motivation due regard must be had to the peculiarities of the context surrounding an employer’s actions. To the extent that peculiarities exist, and cannot be reasonably explained an employer may fail, by a process of inferential reasoning, to satisfy the burden placed upon it.’

See *Fielding Lumber case* (1975) OLRB Rep. September at page 675.”

8. It has been established, *firstly* that it was the past practice of the company, and is common practice within the industry, to maintain a core of skilled workers even during slack periods and *secondly*, that both Mr. Cosolo and Mr. Storrie were among the core group of the respondent employer. The lay-off of two of the skilled core, one who had never been laid-off in 8 years with the company, is a departure from the norm and must be reasonably explained if the respondent is to discharge the onus assigned to it. The respondent attributed the lay-offs of the two grievors to a severe downturn in business which resulted in a lack of metal pattern work. There is no dispute as to the fact that there was, during the period in question, a shortage of metal pattern work; work normally performed by the grievors. There is, however, no evidence upon which to compare the level of business activity in November of 1975 to that of previous years. Certainly if the downturn was more severe than in previous years, as has been intimated by the company witnesses, then the explanation offered by the company would seem to be a credible one. If, on the other hand, the downturn was no more severe than in previous years when the grievors remained at work, then the explanation as put forward would not be a credible one in the absence of some other evidence which would distinguish November 1975 from previous periods of lay-off.

9. The reverse onus acknowledges that the reasons for the employer’s action lie peculiarly within its knowledge. The employer alone knows if the November, 1975 downturn in business was more severe than in past years or if there are other factors which would distinguish this period from previous periods of lay-off. In the face of a past practice of maintaining a skilled core of workers in slack periods it is not, in the circumstances of this case, sufficient to establish that there existed a slack period in November of 1975. Rather, it is incumbent upon the respondent to go beyond the fact of this slack period and establish that it was more severe than those of the past or that some other distinguishing factors existed which justified a departure from the normal practice. For whatever reason, the respondent chose not to call evidence, either oral or documentary, with respect to production figures, dollar volume, orders in progress or whatever other measure of comparison it might

have seen as appropriate. It did not call evidence with respect to an altered financial situation or other distinguishing factors which may have led the company to change its normal practice. In the absence of such evidence and in the face of the respondent's past practice the Board cannot assess the credibility of its explanation and as a result must find, through a process of inferential reasoning, that the respondent has failed to establish, on the balance of probabilities, that it did not act contrary to section 58(a) of the Act in laying-off Mr. P. Storrie and Mr. R. Cosolo.

10. Having made this finding with respect to the lay-off it is not necessary to deal with the circumstances surrounding the order of recall or to make a finding with respect to a violation of section 56 of the Act.

11. The Board directs that the grievors be compensated for whatever real losses, if any, they have incurred as a result of having been laid-off on November 20, 1975. The Board will remain seized of this matter in the event the parties are unable to agree on the amount of compensation.

DECISION OF BOARD MEMBER J.D. BELL:

1. I dissent.

2. There was no evidence submitted that the employer or any person acting on his behalf interfered with or participated in the formation, selection or administration of the trade union. In my opinion, therefore, there can be no violation of section 56 of the Act.

3. I would dismiss the complaint alleging a violation of section 58. There is no evidence of anti-union animus before the Board. Witnesses for the complainant and the respondent all were aware of the resurrection of the Pattern Makers League which has been in process since the beginning of 1975. Further, all parties knew that Messrs. Storrie, Cosolo, Capon and Meier were the driving force behind this move.

4. The grievors and their witness Capon all agreed that during this period although three different applications for certification had been filed and management was fully aware of their activity there was no interference with or discrimination against them by management. Their case is based solely on this lay-off. Therefore the element of anti-union animus is not a factor in this case.

5. The type of operation Modern Pattern Works Ltd. conducts must be considered as the details of this lay-off are reviewed. This operation we are dealing with is primarily a job shop producing wood and metal patterns and plastic layups for industrial customers particularly the automotive industry. Bids are submitted to customers for proposed work and when orders are received short deadlines are common. Also the industry is cyclic with a history of slack periods in the fall months. This was the evidence of witnesses of the complainant and of the respondent. There is no formal lay-off and recall procedure. As jobs run out people are laid off although there is a core group that is usually retained. There is also a history of long leaves of absence and extended vacations being granted. It appears that the coming and going of employees during peaks and valleys of production is an informal free and easy relationship.

6. The detail of times and dates of the lay-off and recall for all seven employees is contained in the majority decision and I will not repeat it.

7. The majority in its decision has ignored the fact that there is no evidence which could lead one to doubt that the reasons given for the lay-off were not the true and only reasons. Nor is there any evidence before us to lead one to question that these reasons might be tainted with anti-union motives.

8. The majority has looked to the procedural section 79 (4a) of the Act and based its decision on the basis that "the respondent chose not to call evidence, either oral or documentary, with respect to production figures, dollar volume, orders in progress or whatever other measure of comparison it might have seen as appropriate." I fail to understand how the majority can make such a finding. The respondent called its most knowledgeable witness, the President of the Company, and he was submitted to extensive cross-examination. Under cross-examination, in reply to counsel for the complainant, he stated that "there was a different trend in the business this year and it had hit the doldrums so it was necessary to lay-off more than they had in quite a few years. The last extreme lay-off was in the late 50's or early 60's." This statement was not disputed. In fact the grievor Storrie stated that he did not remember a lay-off of this magnitude before. To further evidence the lack of metal work available during this period, witness Capon took two and a half days off for personal reasons as he only had a small repair job on a match plate ahead of him. He was the only metal pattern maker still employed at this time.

9. With all due respect to my colleagues, is not the frank and candid evidence of the president of the company, subject to cross-examination, the best evidence available on the state of the business? Are we not concerned with determining if section 58(a), a substantive section of the Act, has been violated but now direct our attention to a procedural section such as 79 (4a) to make a finding? Are we going to look to records and put aside the best oral evidence available? If the majority is not able to assess the credibility of the respondent's explanation from the evidence before us then I do not know what a respondent can be faced with in the future.

10. I would dismiss the complaint that section 58(a) has been violated and find that the requirements of section 79(4a) have been met in that a frank, candid and credible explanation has been given for the very short lay-off.

1535-75-U, 1536-75-U Local Union 2345 International Brotherhood of Electrical Workers, AFL CIO CLC, (Complainant) v. **Onward Manufacturing Company Limited**, (Respondent).

BEFORE: Kevin M. Burkett, Vice-Chairman, and Board Members J.D. Bell and P.J. O'Keeffe.

APPEARANCES: *Lena Kress and L.P. Schell for the applicant; Robert A. Woodrow, H.N. Kelley, E.J. Burchatzki and Carman J. Barfoot for the respondent.*

DECISION OF THE BOARD: March 10, 1976

1. The parties agreed at the outset that the Board should consolidate these matters and hear the evidence arising out of both allegations.
2. These are complaints under section 79 of the Act in which the complainant alleges that the grievors, Messrs. Tom Crawford and Paul Carey, have been dealt with by the respondent contrary to the provisions of sections 58(a) and 61 of the Act.
3. Mr. Tom Crawford who was first hired by the respondent Company on March 3, 1975 was terminated by the company from the position of Receiver on December 17, 1975. The evidence establishes that on December 17, 1975 at approximately 11:00 a.m. Mr. Rittenhouse, the Assistant Service Department Manager, entered Mr. Crawford's work area and commenced to open two boxes of defective parts from a number of boxes piled on two skids for return to a supplier. After opening the second, Box #11, he left and returned a few minutes later with Mr. Burchatzki, the service department manager. There were no "electrics" in box number 11 and when confronted with his oversight Mr. Crawford testified that he opened his desk and threw a dryer into the box. The conversation then centred on a double billing by C.N. Express which had gone undetected by Mr. Crawford and on his absence from his work location late the preceding afternoon. Mr. Burchatzki then terminated Mr. Crawford and ordered him to punch out.
4. Mr. Crawford testified that he was the first person to approach the union on behalf of the employees on Onward Manufacturing, that he actively supported the union and that he personally witnessed nine or ten signatures. He made application for membership in the union on September 24, 1975 at a union meeting called at the Conestoga Motel. The evidence establishes that Mr. H. Kelley, the plant manager, parked in front of the Conestoga Motel and that Mr. MacDonald, a purchasing agent employed by the company, parked at the rear and that they saw and identified the 13 persons who attended the September 24th union meeting. Mr. Crawford was also seen by Mr. C. Barfoot, the foreman of the production department, in the presence of the union business manager in the lobby of the Coronet Motel in late October. Mr. Barfoot testified that he did not know the identity of the person with whom he saw Mr. Crawford.
5. Mr. E.J. Burchatzki, the company's service department manager, testified that he alone was responsible for the termination of Mr. T. Crawford. It was his evidence that Mr. Crawford's attitude and work performance were poor and that it was on the basis of these factors that he was terminated. Mr. Crawford had expressed an interest in becoming a company serviceman and both he and the company viewed the receiving job as a stepping stone in this direction. On October 29, 1975, Mr. Crawford accompanied Mr. Burchatzki on an after hours service call to Guelph in order to acquire some service experience. He was to be paid premium rates for the actual time taken to do the service work. The following week Mr. Crawford requested payment at premium rates for travelling time in addition to the time taken to do the work and a payment of two hours at time and one half was agreed after discussion with Mr. H. Kelley, the plant manager. This agreement was formalized in a memo from Mr. Burchatzki to Mr. Crawford dated November 7, 1975. The memo also made reference to a long distance telephone call which Mr. Crawford admitted that he had made against the wishes of Mr. Burchatzki. Mr. Burchatzki testified that Mr. Crawford, upon receipt of the memo, "tore it up in my face." Mr. Crawford stated that "he crumpled it

and put it in the garbage and said that is where it belongs." In either case Mr. Crawford's response was an improper one.

6. Mr. Burchatzki further testified that subsequent to the November 7th incident, Mr. Crawford's performance improved but in late November he refused to receive certain parts which had been shipped by a supplier in Guelph. Mr. Burchatzki then decided to keep a written record of Mr. Crawford's work performance which was admitted into evidence as exhibit #2 and which covered the period from December 8 to December 17, the day of Mr. Crawford's termination. The record indicates a series of mistakes and omissions during the period. The Board takes particular note of the fact that Mr. Crawford approached Mr. Burchatzki at 5:00 p.m. on December 10, 1975 and indicated that he wished to become a serviceman and that if the opportunity was not given to him he was not interested in the receiving job. He walked out of Mr. Burchatzki's office when the conversation was interrupted by a telephone call stating that Mr. Burchatzki's explanation was unsatisfactory.

7. Mr. Burchatzki testified that during the morning of December 17, 1975 he was advised by a supplier that there had been mistakes made in a shipment of returned parts; the codes had been incorrectly identified and the "electrics" from one part of the shipment had been left out. He immediately sent Mr. Rittenhouse to check the order which was about to be returned to the same supplier that morning. Mr. Rittenhouse returned to report that the "electrics" were missing from Box #11 and the confrontation resulting in Mr. Crawford's termination ensued.

8. Mr. Paul Carey was first employed by the respondent company on April 8, 1974 as a combination maintenance and general clean-up man. He was asked to concentrate on maintenance after about eight months and by his own understanding he had responsibility for the "entire building" other than for gas and electric maintenance. Mr. Carey was terminated by the company on Friday, January 2, 1976, the first day of work following the Christmas lay-off. He was told by Mr. C. Barfoot, the foreman of the production department, that he was being terminated for unsatisfactory work.

9. Mr. Carey also applied for membership in the union at the September 24, 1975 meeting referred to in paragraph 4 and was seen at that meeting by Mr. Kelley who had parked outside the Conestoga Motel. He testified that he went to all of the union meetings and that he had been nominated to the negotiating committee. He called Mr. Barfoot on December 29, 1975 to advise him that he would be away from work on January 6, 1976 representing the union in its negotiations with the company.

10. Mr. H. Kelley assumed the position of plant manager in January of 1975 and in that capacity had overall responsibility for the work performance of Mr. Paul Carey. It was his evidence that Mr. Carey failed to establish a preventative maintenance routine and was incapable of performing certain required work and that as a result the company was faced with breakdowns and expensive outside repair bills. He was supported in this assessment by Mr. Carman Barfoot, the foreman of the production department. Mr. Kelley testified that in November of each year he reviews the performance of his key people, including the maintenance man, and that as a result of this review he decided that Mr. Carey would have to be terminated. Mr. Barfoot testified that he decided to do nothing until after the Christmas season.

11. Mr. Carey in his testimony substantiated many of the complaints which had been made by the company witnesses with regard to his work performance and attitude. He acknowledged his failure to establish a preventative maintenance program but referred to the fact that there were no extra machines to accommodate such a program. Although asked to clean carbon from heat exchangers he went instead to Mr. Barfoot's assistant foreman who had a gas filter's licence and on his advice refused to scrape the heat exchangers suggesting the company call the P.U.C. He explained his failure to regulate the thermostats by noting that it would take someone in the immediate work area two seconds to upset the thermostat setting. Although requested to drain small air lines he did not do so because in his judgment it made no sense as long as the lines were drained at the source on a regular basis. The difficulty he experienced in repairing the air tools resulted, in his assessment, from a lack of adequate replacement parts and repair manuals. Without in any way assessing the technical credibility of Mr. Carey, the general tenor of his testimony strongly suggests that he continually substituted his judgment for that of his superiors; very often in the face of specific and direct instruction from them.

12. The complainant has alleged a violation of sections 58(a) and 61 of the Act. Section 58(a) reads:

"58. No employer, employers' organization or person acting on behalf of an employer or an employers' organization,

- (a) shall refuse to employ or continue to employ a person or discriminate against a person in regard to employment or any term or condition of employment because the person was or is a member of a trade union or was or is exercising any other rights under this Act."

Section 61 reads:

"61. No person, trade union or employers' organization shall seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of a trade union or of an employers' organization or to refrain from exercising any other rights under this Act or from performing any obligations under this Act."

13. This complaint was brought before the Board under the provisions of section 79 of the Act. This section has been recently amended and provides that in complaints of this type the burden of proof lies upon the employer to establish, on the balance of probabilities, that he did not act contrary to the Act. Section 79(4a) reads:

"On an inquiry by the Board into a complaint under subsection 4 that a person has been refused employment, discharged, discriminated against, threatened, coerced, intimidated or otherwise dealt with contrary to this Act as to his employment, opportunity for employment or conditions of employment, the burden of proof that any employer or employers' organization did not act contrary to this Act lies upon the employer or employers' organization."

14. The Board has long held that in complaints such as this, anti union motivation does not have to be the sole reason or even the predominant reason for the activity complained of for the Board to find that the Act has been breached. A recent decision of the Ontario High Court in considering the comparable section of the Canada Labour Code upheld this interpretation.

“In considering an enactment devoid of the words, “sole reason,” or “for the reason only” and resting only on the word “because”, the Court must take an expended view of its application. If the evidence satisfies it beyond a reasonable doubt that membership in a trade union was present to the mind of the employer in his decision to dismiss, either as a main reason or one incidental to it, or as one of many reasons regardless of priority, s.110(3) of the Canada Labour Code has been transgressed.”

See the *Bushnell* case (1974) 1 OR (2d) at page 442. This decision was upheld in a decision of the Court of Appeal dated April 4, 1974 and found at 4 OR (2d) 288.

15. In proceedings of this type the Board does not have the authority to make a determination with respect to the fairness of the actions taken by the respondent. Rather, the question before the Board with respect to each of these terminations is whether or not the respondent was motivated by anti-union sentiment. The Board referred to the reversal of the onus in the *Barrie Examiner* case (1975) OLRB October 6, 1975 wherein the Board stated:

“Given the requirement that there be absolutely no anti-union motive, the effect of the reversal of the onus of proof is to require the employer to establish two fundamental facts – first, that the reasons given for the discharge are the only reasons and, second, that these reasons are not tainted by any anti-union motive. Both elements must be established on the balance of probabilities in order for the employer to establish that no violation of the Act has occurred.”

16. Prior to the enactment of section 79(4a) it was incumbent upon the complainant to establish either directly or by inference that the respondent employer had knowledge of trade union activity. As a result of the amendment it is now incumbent upon the respondent to prove, on the balance of probability, that either it did not have knowledge of trade union activity or of the grievor's involvement in trade union activity and therefore could not have been motivated by it or that in spite of its knowledge of trade union activity it acted without anti-union sentiment. In the matter before us, Mr. Kelley, the plant manager, deliberately set out to determine which employees would attend the September 24, 1975 union meeting. His presence at the Conestoga Motel on that day affirms his knowledge of trade union activity and of the involvement of the two grievors. The onus which falls to the respondent in this matter is one of proving, on the balance of probability, that in spite of this knowledge its actions were in no way motivated by anti-union sentiment.

17. The respondent has established to the satisfaction of the Board the poor work performance and unsatisfactory attitude of Mr. Crawford. He made numerous errors as the Company receiver and on at least three occasions behaved in a flippant manner; firstly, on November 7, 1975 when, by his own testimony, he crumpled Mr. Burchatzki's memo and

said it belonged in the garbage, secondly, when in early December he told Mr. Burchatzki that his explanation as to why he was not being given an opportunity as a serviceman was "unacceptable" and walked out of his office, and finally on the day of his termination when confronted with his failure to include the "electrics" in Box #11 he took a dryer from his desk and threw it in the box and said that "it was just a mistake." The Board must satisfy itself, however, that in acting to terminate Mr. Crawford in the face of his poor work performance and attitude the respondent was not in any way motivated by its knowledge of his trade union activity.

18. In this case the Board sees the time frame as a critical factor. The respondent knew of Mr. Crawford's union involvement from as early as September 24, 1975 and could have at any time used the pretext of his work errors to mask an anti-union motive. More particularly, the respondent could have used the pretext of the November 7 confrontation between Mr. Crawford and Mr. Burchatzki or the pretext of Mr. Crawford's admitted disinterest in the receiver's job as expressed to the respondent in early December. The termination, however, followed a genuine confrontation which the Board views as a culminating incident. The Board is not prepared to draw an inference of anti-union sentiment in the fact of the time which elapsed between September 24, 1975 and December 17, 1975, the date of Mr. Crawford's termination and the opportunities which arose during that period for the respondent to vent anti-union sentiment under the guise of poor work performance and/or unsatisfactory attitude. The Board finds therefore that the respondent did not violate the Act in terminating Mr. Crawford.

19. The respondent has also established to the satisfaction of the Board the work related and attitudinal short-comings of Mr. Carey as referred to in paragraph 11. In the face of these short-comings and in the face of the respondent's knowledge of his trade union activity from as early as September 24, 1975 and in the absence of evidence indicating anti-union activity from September 24, 1975 to the date of his termination, the Board is not prepared to draw an inference of anti-union sentiment in the termination of Mr. Carey. The respondent made a decision to terminate Mr. Carey after the Christmas season because of unsatisfactory work performance and at the first opportunity subsequent to the Christmas lay-off this decision was carried out. The Board finds, therefore, that the respondent did not violate the Act in terminating Mr. Carey.

1570-75-R John Gute, (Applicant) v. Local 92 International Moulders and Allied Workers Union, (Respondent) v. **Mitten Industries Galt Limited on behalf of its Affiliate Company, Field-Price Ltd.,** (Intervener).

BEFORE: Kevin M. Burkett, Vice-Chairman and Board Members J.D. Bell and E. Boyer.

APPEARANCES: *A.A. Morscher and John Gute for the applicant; Edward C. Wittuames and Stan Hobbs for the respondent; R.B. Potter for the intervener.*

DECISION OF THE BOARD: March 5, 1976

1. This is an application brought under section 49 of the Act for the termination of the bargaining rights of the respondent trade union. The Board ruled at the hearing that the applicant's letter of December 19, 1975 setting out his opposition to the union and the accompanying 8 signed statements constitute, in the circumstances of this case, a timely application having regard to the fact that the collective agreement between the incumbent trade union and intervener employer did not cease to operate until December 31, 1975.

2. Under section 49(3) of the Act the Board is required to ascertain, "the number of employees in the bargaining unit at the time the application was made and whether not less than forty-five per cent of the employees in the bargaining unit have voluntarily signified in writing ... that they no longer wish to be represented by the union ..."

3. It was agreed by the parties that there are 12 persons who come within the bargaining unit affected by this application. The applicant submitted 8 signed statements in opposition to the union, all dated December 16, 1975 and all of which correspond with persons coming within the bargaining unit. The Board, however, was also in receipt of 12 signed statements dated February 23, 1976 wherein 6 of the persons who had signed the statements in opposition to the union stated:

"I the employee of Field Price Limited wish to remain as a member of the International Molder's and Allied Workers Union, Local 92, and have them as my bargaining agent."

4. If the Board finds that the statements in support of the union dated February 23, 1976 are the voluntary expressions of those who signed them, then the effect would be to reduce the number of employees in the bargaining unit who have signified that they wish to have the bargaining rights of the respondent terminated to less than 45%. Accordingly, the Board followed its usual practice in such matters and first conducted an inquiry into the origination and circulation of the statements in support of the union. (See *Redpath Sugar* case (1974) OLRB July 502, *Swingline of Canada Ltd.* case (1973) OLRB March 159, *Great Atlantic and Pacific Tea Co.* case (1970) Rep. Dec. 934 and *White Die Casting Company Limited* case (1970) OLRB Rep. Dec. 948).

5. Mr. R. Goldrich was called to testify as to the circumstances surrounding the origination and circulation of the statements in support of the incumbent trade union. The Board is satisfied, having regard to all of his evidence, that the statements in support of the incumbent trade union reflect the true wishes of those who signed them. The Board stated in the *Fleck Manufacturing Limited* case 62 CLLC 16,236 that

"In cases where revocations are filed in respect of signatures to a petition and it is evident to the Board from all the circumstances that the persons signing the revocations intended to revert to and reaffirm their original position as reflected by the evidence of membership filed by the union, the revocation and original evidence of membership represent the most persuasive and reliable evidence of their wishes."

In a termination of bargaining rights application the same principle applies. The most reliable evidence of the true wishes of the employees is the latter signed statements which in effect revoke support for the application for termination and expresses support for the incumbent trade union.

6. The Board is satisfied that the true wishes of the six persons who first signed statements in opposition to the union and then later signed documents in support of the union are to be found in the latter documents in which they express support for the incumbent trade union. Having regard to this finding it is not necessary for the Board to inquire into the origination and circulation of the two remaining statements of desire in opposition to the trade union because standing by themselves they represent less than 45% of the employees in the bargaining unit.

7. Accordingly, pursuant to the provisions of section 49(3) of the Act, the Board dismisses the application.

1594-75-M Baker Gurney & McLaren Ltd., (Employer) v. Graphic Arts International Union, Local 28-B, Toronto, (Trade Union).

BEFORE: Kevin M. Burkett, Vice-Chairman and Board Members N.B. Satterfield and H. Simon.

APPEARANCES: *B.M.W. Paulin, Q.C. for the employer, Charles Buhler for the trade union.*

DECISION OF THE BOARD: March 10, 1976

1. This is a reference by the Minister to the Ontario Labour Relations Board pursuant to section 96 of the Act in which the Minister asks whether she has the authority under the Labour Relations Act to appoint a conciliation officer.

2. The trade union in this matter made a request to the Minister under section 15 of the Act for the appointment of a conciliation officer which was dated December 31, 1975. The trade union stated in the application that it had served Baker Gurney with written notice of its desire to bargain on October 3, 1975 pursuant to section 45 of the Act. Counsel for the Company in this matter strongly objected to the appointment of a conciliation officer in a letter to the Assistant Deputy Minister dated January 7, 1976. The letter read in part:

“... Our objection is based on the fact that the trade union never had bargaining rights with respect to our client other than through our client’s membership in the Council of Printing Industries. Once our client withdraws from this employer association the effect of such withdrawal will be that no trade union represents our client’s employees as bargaining agent.

What this request amounts to in our submission, is an attempt by the applicant to obtain bargaining rights which it does not have by use of the conciliation process.”

3. In 1961 the company authorized the Council of Printing Industries (hereinafter called C.P.I.) to negotiate and sign a collective agreement on its behalf. The C.P.I. signed the 1961 agreement on behalf of the Company and has done so with respect to successive collective agreements up to and including the one which became effective August 1, 1973.

4. The company received from the C.P.I. a letter dated September 5, 1975 requesting official authorization to negotiate, on behalf of the Company, a renewal to the August 1, 1973 collective agreement. The Company, however, by a letter dated October 20, 1975 notified the C.P.I. that it did not authorize the C.P.I. to negotiate on its behalf and withdrew from that organization. The C.P.I. in turn notified the union on November 3 that it no longer represented Baker Gurney. The union had by this time served notice of its desire to amend the collective agreement. Notice was served on October 3, 1975. The union did not receive any response from the company and as a result filed an application for conciliation services on December 31, 1975.

5. Counsel for the company argued at the hearing that there are only three methods by which a union can legally acquire bargaining rights:

- (a) By certification as set out in sections 5 through 12 inclusive of the Act
- (2) By a voluntary recognition agreement as referred to in section 15(3) of the Act
- (3) By means of a collective agreement entered into by *an employer* and a trade union that has not been certified, as referred to in section 52(1) of the Act.

He stated that the union in this case had not acquired bargaining rights covering the employees of Baker Gurney by any of the means listed above but rather was attempting through the conciliation process, to acquire those rights on the strength of its collective agreement with the C.P.I., an employers' organization which is no longer authorized to represent the company. Counsel for the company argued that an affirmative answer to the Minister's question would be tantamount to an invention of a fourth method whereby a union might acquire bargaining rights and would, therefore, be in excess of the Board's jurisdiction. Counsel conceded that by virtue of section 43(1) of the Act the employer was bound by a "like agreement" to the August 1, 1973 agreement, but only until that agreement ceased to operate on December 31, 1975.

6. The Board must address itself to two questions in this matter. *Firstly*, does the trade union hold the bargaining rights for certain of the employees of Baker Gurney? *Secondly*, if it does hold these bargaining rights, does the Minister, in the circumstances of this case, have the authority to appoint a conciliation officer? With respect to the first question the company *voluntarily* authorized the C.P.I. to negotiate a collective agreement on its behalf from as early as 1961 and up to and including the collective agreement which became effective August 1, 1973 and which expired December 31, 1975. The recognition clause of the August 1, 1973 agreement reads:

Article I – Recognition

“The employer recognizes the union as the sole collective bargaining agency for all employees working on operations under the jurisdiction of this agreement.”

The company, therefore through its agent voluntarily recognized the Graphic Arts International Union, Local No. 28-B as the exclusive bargaining agent of certain of its employees. The effect of this recognition is set out in section 43(1) of the Act.

7. Section 43(1) of the Act states:

“A collective agreement between an employers’ organization and a trade union or council of trade unions is, subject to and for the purposes of this Act, binding upon the employers’ organization and each person who was a member of the employers’ organization at the time the agreement was entered into and on whose behalf the employers’ organization bargained with the trade union or council of trade unions as if it was made between each of such persons and the trade union or council of trade unions and upon the employees in the bargaining unit defined in the agreement and, if any such person ceases to be a member of the employers’ organization during the term of operation of the agreement, he shall, for the remainder of the term of operation of the agreement, be deemed to be a party to a like agreement with the trade union or council of trade unions.”

The purpose of Section 43(1) is to facilitate orderly and stable collective bargaining in those instances where a number of individual employers decide that it is in their best interests to bargain through an employers’ organization. An individual employer having voluntarily authorized an employers’ organization to bargain on its behalf is, for purposes of the Act, therefore, bound by the resultant collective agreement and all its terms and conditions as if it had been made by the individual employer and the trade union. The employers’ organization on behalf of a number of individual employers is, for purposes of the Act, no different than a series of identical collective agreements voluntarily entered into by each of the individual employers and the trade union. Where the trade union has not been certified as the bargaining agent of the employees of the individual employer the collective agreement entered into by the employers’ organization on behalf of the individual employer is, for purposes of the Act, an agreement which would fall within the ambit of those agreements referred to in section 52(1) of the Act which were noted by counsel for the company as the third means by which a union can acquire bargaining rights.

8. Furthermore, a collective agreement entered into by a trade union (whether certified or not) and an employers’ organization on behalf of a number of individual employers bars another union from attempting to acquire the bargaining rights covering the employees, of any of the individual employers, who come within its recognition clause (section 5(4)), it bars an attempt by the employees of the individual employer to terminate the bargaining rights in respect to the individual employer (section 49(2)), and it serves to bar the individual employer from entering into a collective agreement with another trade union covering these same employees (section 59(1)). These bars apply because a collective agreement entered into by an employers’ organization evidences outstanding bargaining rights in respect of the employees of the individual employers who are covered by its recognition clause just as if the agreement had been entered into by the individual employer and the trade union.

9. The collective agreement is the best evidence of the bargaining rights extant and accordingly the Board must find, in the absence of an application for termination of bar-

gaining rights or of an abandonment of bargaining rights that the trade union holds the bargaining rights for those employees of Baker Gurney who come within the recognition and jurisdiction clauses of the August 1, 1973 collective agreement or any like agreement by virtue of its being a party to that collective agreement, which was entered into by the C.P.I. on behalf of Baker, Gurney. This is the underlying rationale in support of the Board's decisions in the *Tidey Construction Co. Ltd.* case (1966) OLRB Rep. Jan. 749, and the *Aiken Barron and Roepke Limited* case (1972) OLRB Rep. Feb. 157.

10. Having signified its desire to negotiate a renewal of the August 1, 1973 collective agreement on October 3, 1975 the Board is not prepared to find, in the face of section 45(3) of the Act, that the union should have sent a second notice in response to its notification on November 5, 1975 of the company's withdrawal from the employers' organization. It was incumbent upon the company, having withdrawn from the employers' organization, to respond to the notice as an individual employer bound by a like agreement. The Board finds, therefore, that timely notice has been given pursuant to section 45 of the Act and that accordingly, pursuant to section 15(1) of the Act, the Minister has the authority to appoint a conciliation officer.

11. The answer to the question from the Minister posed in the reference to the Board pursuant to section 96 of the Act is, yes. The Minister has the authority to appoint a conciliation officer.

1436-75-R International Association of Bridge, Structural, and Ornamental Ironworkers, Local 721, (Applicant) v. **Dufferin Steel Company, Awico Division**, (Respondent).

BEFORE: Kevin M. Burkett, Vice-Chairman and Board Members P.J. O'Keeffe and J.E.C. Robinson, Q.C.

APPEARANCES: *Ian Springate, Stan Arsenault and Alfred Henry for the applicant; Paul Botting, Joseph Botting and D.I. Wakely for the respondent.*

DECISION OF THE BOARD: March 10, 1976

2. This is an application brought by The International Association of Bridge, Structural and Ornamental Iron Workers, Local 721 under section 55 of the Labour Relations Act whereby the applicant requests that the Board make a finding that Dufferin Steel Company, Awico Division is bound by a collective agreement between the Ontario Erectors Association and the applicant union by reason of the fact that the predecessor employer was bound by this agreement which remains in full force until April 30, 1977.

3. The respondent argued that preliminary to a finding by the Board with respect to whether a sale of a business has taken place within the meaning of section 55 of the Act the applicant must establish that it had bargaining rights for employees of the predecessor employer. The respondent argued that it had purchased certain assets of Art Wire and Iron

Company, (1972) Limited and that both the accreditation order and the collective agreement introduced by the applicant refer to Art Wire and Iron Company Limited. The respondent took the position that the applicant must establish that its bargaining relationship was with Art Wire and Iron Company (1972) Limited, the predecessor employer.

4. It is accepted that the purpose of section 55 is to continue or preserve the bargaining rights of a trade union which had represented employees of the predecessor employer. The Board has reviewed the evidence and has concluded that Local 721 and the Ontario Erectors Association are parties to a collective agreement to which the predecessor Company Art Wire and Iron Company (1972) Limited bound itself. Mr. MacIssac testified that in 1972 he met with Mr. MacDonald, the owner of Art Wire and Iron Company (1972) Limited, and that Mr. MacDonald agreed to carry on the collective agreement and that he honoured its terms and continued, up to the time of receivership, to remit to the union the required deductions. The union is entitled to make an application under section 55 of the Act to have these bargaining rights continued notwithstanding the fact that the collective agreement refers to Art Wire and Iron Company Limited.

5. Mr. Allan Botting, the President of Dufferin Steel, was called to give evidence of the transactions which the union alleges constitute a sale of business within the meaning of section 55 of the Act. It was established that Dufferin Steel approached the receivers of Art Wire and Iron Company (1972) Limited, (hereinafter referred to as Art Wire (1972)) and made an offer for the purchase of certain assets. Dufferin Steel purchased all of the production equipment and about one half of the office equipment; those pieces of office equipment on which a lien was held were not accepted. Although Mr. Botting stated that there was no goodwill to be purchased from a company in receivership for the second time in four years he did admit that the sum of \$1 was paid for the use of the name of the predecessor company. The business is now called Dufferin Steel Company, Awico Division, the letters 'Awico' were used by the predecessor company as a symbol on its letterhead. Dufferin Steel did not purchase the inventories or the accounts receivable of Art Wire (1972) and was obviously not interested in the payables of that firm. Dufferin Steel refused \$700,000 worth of work which was on the books of Art Wire (1972) although Dufferin Steel assisted the receivers to complete certain work in progress.

6. In a separate transaction Dufferin Steel Holdings Limited, which is owned by Mr. Botting, his wife and eight of his children, purchased the land and buildings which Art Wire (1972) had leased on a month to month basis from the Alliance Building Corporation which owned these assets. There is no evidence before the Board to suggest a corporate relationship between Art Wire (1972) and the Alliance Building Corporation. These transactions were completed on November 15, 1975.

7. Dufferin Steel Awico Division has retained 12 of the 13 shop employees who were employed by Art Wire (1972) prior to the receivership. Mr. Botting testified that it is his intention to have these employees upgraded so as they can perform the pressure welding which is required in the manufacture of boilers, air coolers, pressure vessels and related sophisticated steel work produced by Dufferin Steel. This upgrading has not as yet begun although a similar training program is used by Dufferin Steel (Rexdale) to develop the required skills in its workforce. Although two office employees left voluntarily three others have been retained by Dufferin Steel Awico Division. Three of the four draftsmen who had been employed by Art Wire (1972) have been released.

8. The evidence establishes that Dufferin Steel manufactures on order from large North American Engineering and Construction companies plate work, heaters, air coolers, pressure vessels, stainless steel structures and related sophisticated steel work. It does not manufacture ornamental iron or miscellaneous steel products. Art Wire (1972), on the other hand, had been primarily engaged in the production of ornamental iron and miscellaneous steel products although it had on occasion produced plate work. The successor company, Dufferin Steel Awico Division, is primarily engaged in the production of plate on order from Dufferin Steel. It no longer bids on ornamental iron or miscellaneous steel jobs or services the customers of Art Wire (1972).

9. It was established that Art Wire (1972) had bargaining relationships with Local 721 of the Ironworkers, the applicant in this matter, and with Local 757 of the same union. The relationship with the applicant covered the employees of Art Wire (1972) engaged in on-site erection whereas the relationship with Local 757 covered the shop employees of Art Wire (1972) who produced the ornamental iron and miscellaneous steel products. The applicant acknowledged that there are presently no employees of the successor company, Dufferin Steel Awico Division, engaged in on-site erection work. Mr. Botting testified that the successor company, unlike its predecessor, is not in the construction industry in that it does not produce nor does it intend to produce products which require a work force engaged in on-site erection or installation.

10. The relevant provisions of the Labour Relations Act reads as follows:

“55. (1) In this section,

(a) “business” includes a part or parts thereof;

(b) “sells” includes leases, transfers and any other manner of disposition, and “sold” and “sale” have corresponding meanings.

(2) Where an employer who is bound by or is a party to a collective agreement with a trade union or council of trade unions sells his business, the person to whom the business has been sold is, until the Board otherwise declares, bound by the collective agreement as if he had been a party thereto and, where an employer sells his business while an application for certification or termination of bargaining rights to which he is a party is before the Board, the person to whom the business has been sold is, until the Board otherwise declares, the employer for the purposes of the application as if he were named as the employer in the application.

(3) Where an employer on behalf of whose employees a trade union or council of trade unions, as the case may be has given or is entitled to give notice under section 13 or 45, sells his business, the trade union, or council of trade unions continues, until the Board otherwise declares, to be the bargaining agent for the employees of the person to whom the business was sold in the like bargaining unit in that business, and the trade union or council of trade unions is entitled to give to the person to whom the business was sold a written notice of its desire to bargain

with a view to making a collective agreement or the renewal, with or without modifications, of the agreement then in operation and such notice has the same effect as a notice under section 13 or 45, as the case requires.”

The term “sale” was given a definitive liberal interpretation in the *Thorco Manufacturing Ltd.* case 65 CLLC, 16,052 wherein the Board stated in part:

“it is our opinion that the generality of the words *any other manner* of disposition is not intended to be in any way limited by or interpreted *ejusdem generis* with the words *leases*, or *transfers*. In our opinion, it is more in harmony with the language and the remedy envisaged by the enactment to interpret the words *and any other manner of disposition* as an omnibus or saving provision intended to include dispositions of the business or a part or parts thereof by any mode or means whatever which are not appropriately described by the preceding words which state that *sells* includes *leases* or *transfers*.”

11. The Board must have regard for the purpose of section 55 in applying the section to the facts of a particular case. It is obvious that the section is intended to prevent the undermining or subversion of bargaining rights by means of transactions designed to allow an employer to escape his contractual and/or legal obligations with respect to a trade union. The transactions described in this case were not undertaken for the purpose of eliminating a trade union or of undermining a collective bargaining relationship. These were arm's length transactions undertaken for business reasons. The section, however, was also designed to preserve bargaining rights in those situations where the transactions result in a “continuum” of the business. The Board in this latter type of case must determine if there has occurred “a transfer of sufficient of the enterprise to constitute a sale of business.” The rationale in support of this second and equally important purpose of the section is well stated in the *Aircraft Metal Specialists Limited* case (1970) OLRB Rep. Sept. 702:

“A further and important purpose of section 47A (now section 55) is to preserve the bargaining rights with respect to work which has accrued to the benefit of the employees as a result of their union becoming the bargaining agent through certification or voluntary recognition. Once the union has been recognized with respect to a particular business the union then obtains a right to bargain with respect to wages, hours and other conditions of employment in that business. The right to participate in the business and its functions in that manner is in the nature of a vested right and section 47A (now section 55) allows the union to pursue that bargaining right when all or part of the business is sold. In making determinations under Section 47A (now section 55) therefore, the Board is interested in maintaining the bargaining rights where the sale involves a continuum of the business.”

12. The applicant argued that the respondent had bought the pieces of the predecessor business and had put them back together. In support of this contention reference was made to the purchase of the Art Wire name and the subsequent use of the Awico symbol as evidence of a transfer of goodwill, to the retention of employees, to the purchase of the equipment, land and buildings and to the type of work presently being performed. The ap-

plicant cited four cases in which the Board has held that the sale of a business within the meaning of section 55 has taken place in circumstances where the predecessor company was in receivership.

13. The Board has reviewed these cases. In the *D.H.I. Limited* case (1964) OLRB Rep. Aug. 237 the Board found that there had been a sale of a business within the meaning of section 47A (now section 55) of the Act based on evidence which established that the whole of the undertaking and assets were conveyed to D.H.I. Limited. These included not only the land and machinery but also inventories, raw materials, work in progress, finished products and goodwill which included all contracts and agreements with customers for the supply of goods and services. D.H.I. also assumed certain liabilities of the predecessor company. The facts of this case are obviously distinguishable from those presently before the Board.

14. In both the *Parnell Food* case (1971) OLRB Nov. 716 and the *Field Price* case (1971) OLRB, Oct. 543 the decisions do not set out the facts in sufficient detail to enable the Board to adequately compare those situations with the one presently before us. It is clear, however, that the Board in the *Parnell* case (supra) found that the successor purchased from the predecessor "all assets, property and business," used exclusively in connection with the predecessor company. In the *Field Price* case (supra) it is at least evident that inventories and goodwill were purchased in addition to equipment and that, "the next day the employees returned to work and continued performing the same job." The Board is not prepared to consider these cases as being analogous to the instant case.

15. The *Marvel Jewelry Limited* case (1975) OLRB Rep. Sept. 733 was decided upon evidence which established that the former principal officers of the predecessor company purchased from the receiver not only the office and factory equipment but also the stock of raw materials, the inventory and the wholesale and retail accounts receivable and in addition acquired the lease covering the predecessor's premises. The Board found that "the same goods were being produced by the same employees, the only difference being the scope of the operation" and properly concluded that there had been a continuation of the business.

16. The Board has stated that a business is "the totality of the undertaking" and that the physical assets of building, tools and equipment used in a business are not necessarily the undertaking per se. (See *Raymond Côté* case (1968) OLRB March 1211). In the cases cited by the applicant the respective transactions went beyond physical assets and included such other assets as raw materials, work in progress, inventories, receivables and goodwill and in at least two of those cases the same employees were performing the same function and producing the same products subsequent to the transaction. The Board properly concluded in those cases that the successor continued the business of the predecessor and found that there had been a sale within the meaning of section 55 of the Act.

17. In the instant case the successor has not attempted to service or maintain the customers of the predecessor. The successor company did not purchase inventories or accounts receivable and refused \$700,000 worth of work which was on the books of the predecessor. The successor is primarily engaged in the production of plate on order from Dufferin Steel, whereas the predecessor had been primarily engaged in the production of ornamental iron and miscellaneous steel for a number of customers. The purchase of the land and buildings was made from an unrelated third party. The Board must decide if these distinguishing fac-

tors are sufficient to cause the Board to determine that there has not been a continuation of the business.

18. There are other cases dealing with the sale of a business subsequent to a receivership which, in the opinion of the Board, are more akin to the situation at hand. In the *Brantford Concrete Pipe* case (1966) OLRB Dec. 731 the receiver conveyed land, buildings and certain equipment and installations to the successor but not inventory, stock-in-trade, customer lists or goodwill. The plant had been shut down for a period of 6 months and therefore was not taken over as a going concern. In the *Aircraft Metal Specialists Limited* case (supra) certain of the employees of the predecessor leased from the predecessor the premises and some of the equipment but there was no transfer of inventory or stock, accounts receivable, customer lists and goodwill. Although some of the customers of the successor were the same as the predecessor these were independently obtained and although certain work was done for the predecessor it was acquired by competitive bid. In the *Woodway Structural Components* case (1971) OLRB Nov. 732, the successor negotiated a new lease covering the premises of the predecessor and also leased most of the equipment of the predecessor which had been seized in default of lease payments and in a separate transaction purchased directly from the Bank all of the raw material, work in progress and finished product of the predecessor. The successor company then hired some twelve former employees and proceeded to engage itself in one line of the predecessor's former business, namely recreational equipment. In each of these cases the Board found that there had *not* been a continuation of the business and that therefore there had not been a sale of a business within the meaning of section 55 of the Act.

19. In the instant case the successor company did not purchase or otherwise acquire raw materials, inventories, or receivables and refused \$700,000 worth of work on the books of the predecessor. These facts lend credence to the testimony of Mr. Botting that it is not the intention of the successor company to continue in the ornamental iron and miscellaneous steel business. The release of three of the four draftsmen who worked for the predecessor and the fact that the successor does not employ persons in on-site erection and installation (the employees represented by the applicant union) as the predecessor had done, support Mr. Botting's testimony as does the fact that the successor is now primarily engaged in the production of plate on order from Dufferin Steel, the parent company.

20. For purposes of ascertaining if there has been a sale of a business under section 55 of the Act the disposition of goodwill is a factor which must be considered.

"As stated by Lord Macnaghten in *C.I.R. v. Muller & Co.'s Margarine Limited* (1901) A.C. 217, goodwill is a thing very easily described but very difficult to define. He however defined goodwill by embracing the elements which are the sources of goodwill.

His definition was:

'Goodwill is the benefit and advantage of a good name, reputation and connection of a business. It is the attractive force which brings in customers. It is the one thing which distinguishes a well established business from a new business at its first start ... Goodwill is composed of a variety of elements. It differs in its composition in different trades and

on different bases in the same trade. One element may preponderate here and another there.’

Other factors to be considered are good relations with employees, favourable commercial contracts, franchises, good financial relationships and finally good management.”

(See *Herb Payne Transport* case (1963) C.T.C. 122). In the matter at hand the predecessor’s business was not “a well established business” but was in receivership. The predecessor company did not have favourable commercial contracts, good financial relationships or good management which all go to make goodwill a valuable asset. There was however the possibility that the predecessor’s customers would remain with the successor which is an important component of goodwill and a factor to be considered in determining if there has been a sale of a business within the meaning of section 55 of the Act. In this case, the successor has made no effort to cultivate the primary markets of the predecessor or to maintain its customers and in these circumstances the Board is not persuaded that the purchase of the predecessor’s name for one dollar and the use of the Awico symbol evidence a continuation of the business.

21. The continuation of employees is another factor which points towards the continuation of a business. It is not, however, of itself compelling and must be considered in light of all the evidence. A successor employer cannot mask the fact of a continuation of the business by dismissing the employees of the predecessor and neither should the fact of his continuing to employ these persons be determinative of a sale within the meaning of section 55 of the Act. The more relevant consideration must surely be the nature of the work performed subsequent to the transaction, whether by the same or by different employees. In the matter at hand the successor has continued to employ the shop and office employees of the predecessor while releasing three of the four draftsmen and not employing persons in on-site erection and installation. The shop employees are presently engaged in producing plate whereas prior to the receivership they were primarily engaged in producing ornamental iron and miscellaneous steel. Furthermore, it was the evidence of Mr. Botting that an approach has been made to the Provincial Government to commence a training program in order to upgrade the skills of these employees so as they might in the future perform more of the special welding work of the parent company. In these circumstances the Board is not persuaded that the continued employment of the predecessor’s shop employees is evidence of a continuation of the business.

22. Having regard to the purpose of section 55 as set out in paragraph 11 herein, to the Board’s decisions referred to in paragraph 19 herein, and to the facts before us, the Board finds that there has not been a sale of a business within the meaning of section 55 of the Act. The Board further finds that the applicant does not possess bargaining rights in respect of the employees of Dufferin Steel Company, Awico Division.

0712-75-R Oil & Gas Technicians, Service, Domestic and General Workers Union, Local 1267, (Applicant) v. **Neo Industries Limited**, (Respondent).

BEFORE: Rory F. Egan, Acting Chairman, and Board Members J.D. Bell and O. Hodges.

APPEARANCES: *A.M. Minsky and T. Kuttner for the applicant; D.L. Brisbin for the respondent; R. Russell and R.W. Barry for United Electrical, Radio and Machine Workers of America.*

DECISION OF RORY F. EGAN, ACTING CHAIRMAN AND BOARD MEMBER J.D. BELL: March 18, 1976

1. In its decision dated August 26, 1975, the Board certified the applicant as bargaining agent for all employees of the respondent working at or out of its factory at the Town of Stoney Creek, with certain exceptions not here relevant.
2. In a letter dated October 2, 1975, United Electrical, Radio and Machine Workers of America (hereinafter referred to as "the UE") requested the Board to review the above decision. In its request, the UE alleged that the certification was obtained by fraud.
3. The UE was not a party to the certification proceedings. It argued, nevertheless, that it had status to intervene because it is a party to a collective agreement with the respondent with respect to the latter's employees in bargaining units in plants in Hamilton. The UE submits that it is clear from the collective agreement that at all material times it had members among the respondent's employees and that that fact entitles it to intervene in the present matter. The UE, however, did not file any evidence of membership covering employees in the bargaining unit dealt with in the application for certification. The UE seeks to allege that the applicant and the respondent failed to disclose to the Board that a new plant was involved in the certification and that "build-up" would occur. The UE sought to argue that this silence on the part of the respondent and the applicant amounted to collusion with a resultant fraud upon the Board. The UE also contended that it ought to have been shown on the forms filed by the applicant and the respondent as a trade union known to the respondent as claiming to be the bargaining agent of or to represent employees who might be affected by the application for certification.
4. The applicant and the respondent each took the position that the UE had no status in these proceedings and, therefore, ought not to be heard by the Board. The primary question before the Board is, therefore, the status of the UE, which includes its right to notice and to enter these proceedings and make allegations. Evidence with respect to the bases for the allegations was difficult to distinguish from that necessary to establish status.
5. The Board has consistently held that a trade union that seeks to intervene in proceedings before the Board must show either that it is the bargaining agent for or that it represents employees affected by the application. The employees are those in the bargaining unit with which the Board is concerned in each instance. The practice has been to permit a trade union to intervene in an application for certification so long as that trade union can demonstrate that it had an interest in the proceedings, even though that interest was restricted to representation of only one employee who would be eligible for collective bargaining in the unit claimed by the applicant (*Essex Health Association*, OLRB M.R. Feb. 1967,

p. 885; *Frost Steel and Wire Company Limited*, OLRB M.R. Apr. 1970, p. 152). The Board has, however, insisted upon the production of evidence of representation in the bargaining unit concerned by an intervener, either by way of membership card or authorization or through the coverage of a collective agreement (*G.S. Wark Limited*, OLRB M.R. Aug. 1971, p. 526).

6. In *Chukini Lumber Company Limited*, OLRB M.R. Apr. 1970, p. 63, an intervention was filed in an application for certification by a local union. At the hearing, the local union was invited to file any membership documents it had which would establish its interest. Certain membership documents were filed by the local, but none of them were signed by persons whose names appeared on the list of employees filed by the respondent company. The Board found that since the local failed to establish that it represented any of the employees in the bargaining unit, it had failed to establish an interest in the proceedings and its intervention was accordingly dismissed.

7. In view of the fact that the UE makes reference to a collective agreement between the respondent and itself with respect to employees of the respondent in Hamilton, the case of *The Board of Hospital Trustees of the City of London*, (1970) OLRB Rep. Aug. 579, is of particular relevancy. This case involved an application for certification by The Civil Service Association of Ontario (Inc.) in which London and District Service Workers' Union, Local 220 attempted to intervene. Set out below are the paragraphs of that decision which are particularly relevant to the situation before the Board in the present instance:

6. The Intervener did not file any evidence of membership on behalf of any of the employees included in the bargaining unit described above. However, the intervener claimed to have an interest in these proceedings since it represented other employees of the respondent who were covered by the subsisting collective agreement between the intervener and the respondent. The intervener accordingly claimed the right to address itself to other issues apart from the description of the bargaining unit in this matter.
8. The Board denied the intervener the right to make further submissions in this matter on the grounds that its interests upon which it based its intervention had been fully protected by the specific exclusion quoted above. Since the intervener failed to establish that it represented any employees in the bargaining unit and since its bargaining rights were fully protected, it had no further interests in these proceedings and accordingly should not be entitled to make further representations in this matter. The fact that the intervener represented other employees of the respondent in a separate bargaining unit at the same location did not, of itself, entitle the intervener to participate in these proceedings any more than a trade union that represented employees of an employer at one location could intervene and make representations with respect to a bargaining unit of employees of an employer in a separate geographic area. So long as the intervener's interests upon which it sought to intervene had been fully protected and in the absence of evidence that it represented any of the employees in the bargaining unit, the intervener must be held to be a stranger to these proceedings and not entitled to participate.

8. In the *Northern Electric Company Limited and United Electrical, Radio and Machine Workers of America* case, 63 CLC ¶15, 484, the Communications Workers of America Union sought to intervene in certification proceedings in which the United Electrical, Radio and Machine Workers had applied for certification which involved displacement of the Northern Electrical Employees' Association, the incumbent union. The Communications Workers, in that case, sought to attack the very jurisdiction of the Board to deal with the matter.

9. The Board held, in the above case, that the Communications Workers Union was not a party to the proceedings "nor had it filed any evidence of membership for persons purporting to be employees of the respondent *in that bargaining unit* (emphasis added)". The Board found that the Communications Workers Union was a stranger to the proceedings and had no status to be heard or to argue the issues. The Board's ruling was upheld on appeal to the High Court of Ontario.

10. It is thus obvious that the nature of the allegation sought to be made by the party attempting to intervene is not a concern of the Board in determining the primary question of the status of the party seeking to intervene. This is clear not only from the *Northern Electric Company* case (*supra*) but also from the decision of the Board in *Formrite Forming Ltd.*, (1971) OLRB Rep. Feb. 49. In the latter case, the intervener sought to establish that a fraud on the Board had been committed with respect to the membership evidence filed by the applicant. The Board found that the intervener was, at all times, a stranger to the proceedings. It went on to consider the question as to whether a stranger to a proceeding may be heard to allege that a fraud had been committed against the Board by the parties to the proceeding. The Board found that since the intervener was a stranger to the proceedings, it was not entitled to participate or adduce evidence in support of charges of fraud against the applicant or of improper or irregular conduct against the applicant or the respondent. It is abundantly clear that the party seeking to intervene in proceedings before the Board must be able to demonstrate that it represents at least one person in the bargaining unit with which the Board is concerned before it will be permitted to enter the proceedings, notwithstanding the particular nature of the interest or allegations it seeks to place before the Board. The reason for the strict adherence to the requirement of representational evidence in the bargaining unit before granting status is obvious. To throw open the proceedings, particularly certification proceedings, to every party which, although lacking representational status, felt it had an interest in the organization of employees in a particular bargaining unit would simply lead to endless delays, multiplicity of parties and issues and interminable proceedings.

11. Having in mind the foregoing principles and the fact that the U.E. filed no membership evidence and failed to meet the other tests referred to in the cases above cited, the Board finds that the UE is a stranger to the proceedings and has no status to raise or argue the issues which it has attempted to place before the Board. The request of the UE is, therefore, denied.

DECISION OF BOARD MEMBER OLIVER HODGES:

1. I agree with my colleagues that the UE was without status to intervene in the application for certification. However, I would have gone further as a result of the evidence I heard.

2. Consideration should be given to the Board's comments in *The Hydro Electric Power Commission of Ontario*, [1962] OLRB Rep. Aug. 160. The applicant union in that case applied to be certified for employees at the Thunder Bay Generating Station. The station, at the time of application, was not operational and was going through the commissioning stage. The Board indicated that the employees sought to be represented fell into three categories:

1. employees who were part of the company's construction division;
2. employees from other generating stations temporarily transferred and scheduled to return to their jobs retaining seniority in their regular bargaining units;
3. employees hired locally and represented by the intervener. The intention of Hydro was to close the plant and put it in operation three years later.

In making its decision the Board made the following comments:

It should be noted that the applicant is seeking not a craft unit but an industrial unit. The appropriate unit then would consist either of the employees in the construction phase or of the employees in the operational phase of the project. If we assume for present purposes that the employees engaged in the construction phase comprise the bargaining unit, the unit would consist not only of the 13 employees whom the applicant here seeks to represent, but also of the other employees who are engaged in construction work at the station. It is obvious that any unit comprising these employees consists of such a number of employees that the applicant lacks the necessary membership either for a vote or for outright certification. If, on the other hand, we were to treat the employees engaged in the "operation" of the station as the appropriate unit, it is obvious in the circumstances of this case that there is not a substantially representative group of employees in the bargaining unit at this time. The applicant lacks sufficient membership to warrant outright certification and it would be contrary to long established policy for the Board to direct that a representation vote be taken in the operational unit at a future date, some three years hence, on the basis of evidence presented with respect to employees who are engaged primarily in the construction phase of the project. In other words the application is premature.

Likewise, in the instant case, the applicant is seeking to represent an industrial unit. However, at the time of the application, the evidence indicates that the plant was not in any operational stage. The workers present during August and possibly up to and including October 1975 appear to have been performing construction work.

3. The practice of the Board with respect to mining operations as outlined in *Surluga Gold Mines Ltd.*, [1967] OLRB M.R. July 352, is also relevant to the instant case:

It has been the practice of the Board for many years to find three types of bargaining units appropriate for collective bargaining in mining opera-

tions. During the period that the mine site is under construction it is the Board's practice to find that a bargaining unit of all employees engaged in the "construction stage" of the mining operations to be appropriate for collective bargaining. After the construction has been completed and during the time that the mine is being developed it is the Board's practice to find that all employees engaged in the "development stage" of the mining operations are appropriate for collective bargaining. Finally, when the development of the mine has been completed and the mine has entered the "production stage" of its operations, it is the Board's practice to determine that a bargaining unit of all employees of the respondent in its mining operations (without qualification) is the appropriate unit for collective bargaining.

In the case presently before us it would appear that two different arguments could be made:

- (a) If, as it appears to be the case, the plant was not in production at the date of the certification application, then any certificate issued by the Board should have been restricted to the construction stage of the development of the Stoney Creek plant.
- (b) If construction has been completed indicating that the plant was in its production stage, then the facts indicated that a build-up situation was present.

4. The application for certification dated August 5, 1975 was supported by two applications for membership. Both of these are dated August 5, 1975. Both application cards show the residence of the union member as Toronto, Ontario. The collector of a one dollar fee paid by each person is John McPherson. Neo Industries Limited is shown as the "company" on both cards. The cards were received by the Board on August 11, 1975 by regular mail, accompanied by Board Form 8, dated August 8, 1975 at Toronto, Ontario, over the signature of John R. McPherson, Business Manager of the applicant. Form 8 questions 1 and 2 are completed as follows:

- 1. The documents submitted in support of the application represent documentary evidence of membership on behalf of 2 persons who were employees of the respondent in the bargaining unit that the *applicant herein claims to be appropriate for collective bargaining* on the date of the making of the application.
- 2. There were 2 persons who were employees of the respondent in the bargaining unit that the *applicant herein claims to be appropriate for collective bargaining* on the date of the making of the application.

5. Form 1 Application for Certification is dated August 5, 1975 over the signature of John R. McPherson, Business Manager. The place of origin of this document is left blank. Questions called for by this form are answered as follows:

The applicant applies to the Ontario Labour Relations Board for certification as bargaining agent of the employees of the respondent in a unit that it claims to be appropriate for collective bargaining.

The applicant states:

1. (a) address of applicant:
214 Merton St. #302
Toronto, Ontario

(b) address of applicant for service:
214 Merton St. #302
Toronto, Ontario

(c) address of respondent:
Box 3186
Station "C", Hamilton, Ontario
2. (Where the applicant is a council of trade unions) The name and address of each constituent union of the council of trade unions that is the applicant:
[struck out]
3. Detailed description of the unit of employees of the respondent that the applicant claims to be appropriate for collective bargaining, including the municipality or other geographic area affected:

All employees of the respondent working at or out of their factory at the Town of Stoney Creek, save and except foremen, persons above the rank of foreman, office staff, sales staff and persons regularly employed for not more than 24 hours per week and students during the summer vacation period.
4. Approximate number of employees in the unit described in paragraph 3:

two
5. The name and address of any trade union or council of trade unions known to the applicant as claiming to be the bargaining agent of, or as claiming to represent, any employees who may be affected by this application:

[struck out]
6. The applicant does not request that a pre-hearing representation vote be taken in this matter among the employees in such voting constituency as the Board determines.

N.B. This application will be processed without a pre-hearing vote being taken unless the applicant clearly indicates that it DOES request a pre-hearing representation vote by striking out the words "does not" paragraph 6.

7. Other relevant statements (attach additional pages if necessary):
 ["blank"]

6. Form 9 Reply to Application for Certification is dated August 8, 1975 at Hamilton, over the signature of the solicitor for the respondent. The questions called for by this form and the replies are given as follows:

The respondent replies to the application for certification as follows:
 The respondent states:

1. (a) correct name of respondent:
Neo Industries Limited
- (b) address of respondent:
*Box 3186, Station "C",
 Hamilton, Ontario*
- (c) address of respondent for service:
*Edwin L. Stringer, Q.C.
 105 Main Street East, Suite 1405
 Hamilton, Ontario L8N 1G6*
2. General nature of the respondent's business:
Plating and Machining
3. Total number of employees of the respondent on the payroll of the plant(s) or establishment(s) in respect of which the application for certification has been made:
three (3)
4. Number of employees in the unit described by the applicant as being appropriate for collective bargaining as of the date the application was made:
two (2)
5. Detailed description of the unit claimed by the respondent to be appropriate for collective bargaining, including the municipality or other geographic area affected:
As proposed by applicant.
6. Number of employees in the unit claimed by the respondent to be appropriate for collective bargaining as of the date the application was made:
two (2)
7. The name and address of any trade union known to the respondent as claiming to be the bargaining agent of or to represent any employees who may be affected by the application:
n/a

8. The date of any certification of a bargaining agent of any employees who may be affected by the application:

n/a

9. *[struck out]*

10. Other relevant statements (use additional pages if necessary):
[“blank”]

7. Form 47, Return of Posting, was received by the Board on August 11, 1975. This form indicates that one “Castledine”, Vice President of Manufacturing of Neo Industries, posted one copy of the Board notice to employees on August 8, 1975 (the green sheet). Item (2) of Form 47 states:

I did, on the 8th day of August 1975 post upon the premises of the respondent -1- notices to employees in this matter, in conspicuous places where they are most likely to come to the attention of all employees who may be affected by the application.

8. The Board heard this matter on August 25, 1975 in Board File 0712-75-R. The appearance information sheets filed by the parties indicate appearances as follows:

Applicant: John R. McPherson
214 Merton Street, Suite 302
Toronto, Ontario

Respondent: E.L. Stringer, Q.C.
65 Queen Street West, Suite 2120

9. The name “Neo Industries” appearing in the style of cause of the application was amended at the hearing to read: “Neo Industries Limited”.

10. The decision of the Board certifying the applicant issued on August 26, 1975 for a bargaining unit described in para. 3 of the decision as follows:

3. Having regard to the agreement of the parties, the Board further finds that all employees of the respondent working at or out of its factory at the Town of Stoney Creek, save and except foremen, persons above the rank of foreman, office staff, sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period, constitute a unit of employees of the respondent appropriate for collective bargaining.

11. The list of employees filed by the respondent is dated August 5, 1975 over the signature of E.L. Stringer. Two employees are named. One is classified as “labourer”. The other is classified as “Mechanic Electrician”.

12. The Board records show the filing of a collective agreement with the Board on January 30, 1974 with a further filing on June 18, 1974 of a memo of changes made in the first document. The names appearing on the face of the collective agreement as parties are:

Neo Chrome Limited
 Neo Machine Limited
 Neo Engraving Limited
 and

United Electrical Radio and
 Machine Workers of America (UE)

The collective agreement is dated at Hamilton, Ontario, November 1, 1973 and is shown as being effective from that date to the date of termination on October 31, 1975. Signatures are shown for the three named companies as "W. Castledine" and "J. Jones". Among those signing for the (UE) are "R.W. Barry" and "S.L. Farkas".

13. The applicant and the respondent are not strangers to the practice and procedure of this Board. The applicant trade union has been certified as bargaining agent for various employee bargaining units on previous occasions. The requirements of Practice Note #8 are clear. In particular, the applicant is advised in para. 5 of the Practice Note to "*make certain that, in its application it has divulged whatever knowledge it may have that another union claims to ... represent any of the employees affected by the application*". The respondent most certainly can be taken to have understood that the (UE) would have an interest in the new plant. Mr. Castledine; the Vice President of Manufacturing, posted the Notice to Employees. Mr. Castledine is also a signatory to the collective agreement filed with the Board by "Neo ..." of Hamilton.

14. The testimony of witnesses and the documentary evidence adduced at the show cause hearing together with the filings by the applicant and the respondent with regard to certification, raises in my mind the question of the validity of the Board certificate, considering that the Board made its decision without the advantage of the information which the parties knew or should have known to be relevant and of interest to the Board.

15. There is in particular the testimony of the respondent's witness, Mr. Casey Dendekker, General Manager of Transway Steel Buildings Ltd., the building contractor of the new plant structure. A letter, dated Friday, August 1, 1975 from Mr. Dendekker to Neo Industries Limited placed in evidence that "the building is substantially completed and ready for occupancy". He testified in cross-examination that "the building was fairly empty and the tanks were not hooked up". He further testified that the electrical contractor was not working on the tanks during August, but was putting conduit on the wall. The electrical power in use was a 100 ampere 110/220 volt temporary service for lighting and power and remained so until September 4, 1975. Transway was invoiced for "temporary service at Neo Industries" on May 28, 1975. On September 4, 1975 this witness attended an "open house" at the new plant where he saw additional painting since an August visit. He saw one lathe in the building on September 4th. The Transway contract was to provide the site, the tanks, heating, lighting, doors, hardware, etc., the minimum requirements. The testimony and evidence adduced through this witness makes clear that production at this new plant could only be some time forward from the date of application for certification made Tuesday, August 5, 1975.

16. Mr. Frank Sharon, a witness called by the UE, testified that he was presently employed by Neo Industries in Hamilton. However, he had worked at the new Stoney Creek

location during the last three weeks of August 1975, where he painted walls. Exhibit #1, a dues check-off record of the union indicates payment of dues received from the company for periods of employment in July 1975 and August 1975. Sharon punched the time clock at the Hamilton location on Mead Avenue in the morning and evening. Transportation to and from the new plant site at Stoney Creek was provided by the company. These travel arrangements were made for Sharon by the Superintendent of the chrome division at Hamilton. Other persons were employed to install equipment, one such item being an air compressor located near where Sharon was painting. Sharon was given assistance by these men where he was required to move anything.

17. Cross-examination by counsel for the applicant, Sharon testified that he first was employed by Neo from September 1, 1974 to March 1975, and was recalled or rehired in the second or third week of July 1975, a week before the plant vacation period, doing his old job as a painter at the Mead Avenue location in Hamilton. His work at Stoney Creek covered a period in August and part of September. Concerning the application for certification, Sharon said he had not seen the posted OLRB notice regarding the application, nor had the other workers there talked about the union. These mechanics were putting in copper pipe and the electricians were installing outlets. The first names of two of the workers at the Stoney Creek site were remembered by Sharon as "Bryan" and "Wayne". He never heard the last names. They were using first names back and forth.

18. Cross-examination by counsel for the respondent, Sharon was unshaken as to the period of his employment by Neo. He further testified that after he started the job at Stoney Creek he worked every day until it was finished. He had been instructed to paint the twelve foot plant walls only. He saw the plumber putting in a hot water tank and a roof vent. A large lathe was there when he began work. He did not see anything in operation. There was no "dry run". Sharon was not re-examined.

19. Mr. Dick Barry, called by the UE, testified that he was a National Representative of the UE, that he serviced a number of shops in the Hamilton area, and that Neo was one of those plants. He participated in the organization of the Hamilton plant and in the counting of the ballots of the certification vote. Mr. Castledine and Mr. Stringer attended the vote proceedings. Mr. Barry participated in the negotiations that led to a collective agreement. Mr. Stringer was spokesman for Neo in those negotiations. The November 1, 1973 collective agreement was entered as Exhibit #2 at the show cause hearing. The proposals for renewal of the collective agreement were entered as Exhibit #3. The first item in those proposals was an amendment to Clause 2.01, to incorporate the new Stoney Creek plant of Neo in the collective agreement. These proposals were ratified by the local union on September 7, 1975. The UE was aware of the company plans and of the new plant on De Witt Road in Stoney Creek. It appears the company move prompted the UE to relocate its Hamilton Barton Street offices at Stoney Creek. Mr. Barry further testified that in the spring of 1975 he learned from Mr. Castledine, Neo Vice President of Manufacturing, that the plating operation would probably be moved to Stoney Creek. Mr. Barry said that he observed the construction of the Stoney Creek plant in July of 1975.

20. On October 1, 1975, Mr. Barry testified, the union presented its renewal proposals to Neo, including an amendment to extend the scope of the agreement to Stoney Creek. The company response was that a certificate certifying another union had been issued. Mr. Barry said the reply was a surprise, because the plant was still under construction. Mr.

Barry and Mr. Farkas, another UE official, and three members of the UE Negotiating Committee, viewed the Stoney Creek location on October 1, 1975. Mr. Barry said that six or seven construction workers were seen wearing hard hats. They were bending conduit. The tanks were not hooked up and the engine lathe was not operating.

21. Mr. Barry testified that he had knowledge of the UE membership records related to Neo employees and the check-off of union dues. Exhibit #5 is the union record of T. STOJANOVIC. It shows that dues were paid in 1975 up to and including September. Barry testified that STOJANOVIC was employed at the Stoney Creek plant on November 19, 1975, the date of this hearing. He also identified the membership application card of P. SKALJAC dated March 29, 1973 and entered as Exhibit #8. The dues record of P. SKALJAC was entered as Exhibit #4 and indicates unbroken payment of dues received in May 1975 through and including September 1975. SKALJAC went to work at the Stoney Creek plant in October 1975.

22. The constitution of UE Local 520 was entered as Exhibit #6. Article 7(3) indicates that a member may be in arrears for three months before being suspended from membership. The constitution of the National Union (UE) supports the three month provision of the Local 520 bylaws. Thus the two employees who transferred from the Hamilton plant with dues paid for September would continue to be members in good standing for October, November and December of 1975, on the basis of dues checked off by Neo at the Hamilton plant.

23. Cross-examined by counsel for the respondent, Barry was asked whether there was an agreement covering Neo Industries Limited, the respondent. Barry testified that there were four companies, of which three were parties to the collective agreement. He was unable to locate Neary or Ryan, the two employees for whom the applicant has been certified. His information was that there had been two men terminated at Hamilton. Barry testified that he had serviced the Neo plant at Hamilton for ten years. The renewal proposals had been drafted in August and ratified September 7, 1975. Questioned concerning the membership status of F. SHERAN, Barry testified that an initiation fee was not collected when he was rehired, since he was already a member and was on check-off. He reiterated that the Stoney Creek plant was under construction at the relevant time and that he had received no information from employees at that location. Mr. Barry was not cross-examined with regard to his May 1975 conversations with Neo Vice President of Manufacturing, Mr. Castledine, concerning the probable move of the Neo Hamilton plating operation to the Neo plant at Stoney Creek.

24. Mr. John THACKEO, called by the UE, testified that he was an employee of Neo at Hamilton, and had been for two years. He was present during discussions concerning the transfer from Hamilton to Stoney Creek, some time in the second or third week of August. The participants in these discussions included Mr. John Hepcroft, Superintendent of the chrome division, and Paul Woolf, maintenance electrician. The discussion was a continuation of conversations regarding the chances of going to work at Stoney Creek. Hepcroft told Woolf that he must resign from Neo at Hamilton and then he could apply at Stoney Creek. His fourteen years of seniority with the company would be in good standing, but he would lose union seniority under the collective agreement. Holidays and vacation earned would stand, however. Thackeo testified that he is classified as a maintenance mechanic and does general plant repairs. Thackeo is a member of the UE committee that went to see the Sto-

ney Creek plant on October 1st. He could see from the door that the reversing switches built in Hamilton were not yet connected to the rectifiers and that there were no bus bars erected to carry current to the plating tanks. The bus bars would have been 6" x 1/2", and would transmit current 24' from the rectifiers to the tanks. The tanks were 8' x 12' x 30' deep and sunk in the ground. The operation appeared to be parallel to the Hamilton plating installation. He said the Stoney Creek plant was about 120' long by 40' wide, with a 40' ceiling.

25. Considering the evidence adduced at the show cause hearing, it is apparent that the Board was not given all of the relevant evidence at the certification hearing. Had there been full disclosure of the facts, i.e., that the plant was in the phase of construction, I would have restricted the certificate to the construction stage. Taken with the uncontradicted evidence of company knowledge of the interest of the UE in the new plant, I find that the certificate, in all of these circumstances, must be revoked.

1142-75-R International Beverage Dispensers' and Bartenders' Union, Local 280, of the Hotel and Restaurant Employees' and Bartenders' International Union A.F.L.-C.I.O.-C.L.C., (Applicant) v. **Seaway Hotels (Ontario) Limited**, (Respondent).

BEFORE: D.H. Kates, Vice-Chairman, and Board Members J. D. Bell and P. J. O'Keeffe.

APPEARANCES: *S. Grant, J. Troll and D. Baker for the applicant; J. P. Sanderson, Q.C. and J. Garshon for the respondent.*

DECISION OF THE BOARD: March 16, 1976

3. By agreement of the parties the Board finds that all full time and part time tapmen, bartenders, alcoholic beverage waiters, male or female, barboys and improvers in the employ of the respondent in Metropolitan Toronto save and except managers and those above the rank of manager, constitute a unit of employees of the above respondent appropriate for collective bargaining.

4. The issue to be resolved in this case pertains to employees who ought to be included in the bargaining unit having regard to the particular operations of the respondent and the services provided by its employees in meeting the respondent's business objectives. The respondent operates a hotel in Metropolitan Toronto known particularly by its customers as "The Beverly Hills Hotel". Incidental to the hotel operation the respondent maintains a number of eating and beverage rooms that are accessible to both hotel guests and the general public. In addition to the food and beverage establishments, the respondent provides night club entertainment at its "Hook and Ladder Club". Finally, special convention and meeting rooms are available on the premises where food and drink may be catered through the hotel's facilities. As an incident to serving its guests who are staying at the hotel, room service personnel are retained to provide food and beverages at their request.

5. The Board's policy with respect to distinguishing beverage room employees from dining or restaurant employees in past cases is to apply a "primarily engaged test". (See: *The Cedarbrae Hotels & Homes Ltd. case et al* [1973] OLRB Rep. Jan. 44; *The Wentworth Arms Hotel Limited case* [1966] OLRB Rep. May 138; *The Caswell Hotel Ltd. case* [1970] OLRB Rep. 446). That is to say, the Board will determine the prime purpose of the area of the employer's establishment where the employee is assigned and thereby will ascertain the purpose of employment commensurate with the customer's requests. If the predominant theme of the area appears to be dining, notwithstanding the availability of alcoholic beverages, then the employee will be excluded from the beverage unit; if the predominant theme is the serving of beverages, notwithstanding the availability of food, then the employee will be included in the unit. In developing the primary purpose test the Board appears to have borne in mind prevailing liquor licencing requirements of the establishment under consideration and the permissible quotas of food and beverage permitted to be served in accordance with the nature of the licences accorded the employer.

6. There are three beverage rooms located on the hotel's premises. In both "The Olympia Room" and "The Hall of Fame" bottled and draft beer are served. The "Trophy Lounge" provides liquor as well as beer to its patrons. These rooms are physically adjacent to a lobby where a snack bar is maintained. A customer seated in the beverage room may at any time approach the snack bar to purchase a hamburger, hot dog etc. etc. as may suit his fancy. The waiters' principal duties are to serve the beverages ordered by the customer and clear the tables of glasses and waste after the customer has left. The Board is clearly of the view that persons employed (including porters) in the Olympia, Hall of Fame and Trophy Rooms are engaged primarily in bargaining unit work and ought to be included in the appropriate craft unit heretofore referred to in paragraph 3. Furthermore employees assigned to the snack bar are primarily engaged in the serving of food and ought to be excluded from the unit.

7. The respondent maintains a coffee shop known as "The Pagoda Room". Breakfast, lunch and dinner meals are served in The Pagoda Room as well as miscellaneous snack foods. The restaurant opens at 7 a.m. and closes at 8 p.m. Commencing at 12 noon a customer may order an alcoholic beverage from a waitress who is normally assigned to the "Hook and Ladder Club". She is required to take the order and proceed to the service bar located in the club area to retrieve the drink and thereupon serve the customer. There are approximately ten employees assigned to service the coffee shop and the Board is of the view that their functions are primarily directed towards the service of food and ought therefore to be excluded from the appropriate bargaining unit.

8. The respondent maintains approximately eight waitresses on a rostrum who are on call to service its banquet facilities. In the event alcoholic beverages are served at an affair both a waitress from the dining room portion of "The Hook and Ladder Club" and a waiter from one of the beverage rooms are assigned to cater to the requirements for satisfying those in attendance with alcoholic requests. The Board however is of the view that the waitresses while assigned to the respondent's banquet facilities are primarily engaged in the serving of meals catered by the respondent in accordance with the instructions received by the customer. The Board is therefore satisfied that these waitresses ought to be excluded from the bargaining unit.

ney Creek plant on October 1st. He could see from the door that the reversing switches built in Hamilton were not yet connected to the rectifiers and that there were no bus bars erected to carry current to the plating tanks. The bus bars would have been 6" x 1/2", and would transmit current 24' from the rectifiers to the tanks. The tanks were 8' x 12' x 30' deep and sunk in the ground. The operation appeared to be parallel to the Hamilton plating installation. He said the Stoney Creek plant was about 120' long by 40' wide, with a 40' ceiling.

25. Considering the evidence adduced at the show cause hearing, it is apparent that the Board was not given all of the relevant evidence at the certification hearing. Had there been full disclosure of the facts, i.e., that the plant was in the phase of construction, I would have restricted the certificate to the construction stage. Taken with the uncontradicted evidence of company knowledge of the interest of the UE in the new plant, I find that the certificate, in all of these circumstances, must be revoked.

1142-75-R International Beverage Dispensers' and Bartenders' Union, Local 280, of the Hotel and Restaurant Employees' and Bartenders' International Union A.F.L.-C.I.O.-C.L.C., (Applicant) v. **Seaway Hotels (Ontario) Limited**, (Respondent).

BEFORE: D.H. Kates, Vice-Chairman, and Board Members J. D. Bell and P. J. O'Keeffe.

APPEARANCES: *S. Grant, J. Troll and D. Baker for the applicant; J. P. Sanderson, Q.C. and J. Garshon for the respondent.*

DECISION OF THE BOARD: March 16, 1976

3. By agreement of the parties the Board finds that all full time and part time tap-men, bartenders, alcoholic beverage waiters, male or female, barboys and improvers in the employ of the respondent in Metropolitan Toronto save and except managers and those above the rank of manager, constitute a unit of employees of the above respondent appropriate for collective bargaining.

4. The issue to be resolved in this case pertains to employees who ought to be included in the bargaining unit having regard to the particular operations of the respondent and the services provided by its employees in meeting the respondent's business objectives. The respondent operates a hotel in Metropolitan Toronto known particularly by its customers as "The Beverly Hills Hotel". Incidental to the hotel operation the respondent maintains a number of eating and beverage rooms that are accessible to both hotel guests and the general public. In addition to the food and beverage establishments, the respondent provides night club entertainment at its "Hook and Ladder Club". Finally, special convention and meeting rooms are available on the premises where food and drink may be catered through the hotel's facilities. As an incident to serving its guests who are staying at the hotel, room service personnel are retained to provide food and beverages at their request.

5. The Board's policy with respect to distinguishing beverage room employees from dining or restaurant employees in past cases is to apply a "primarily engaged test". (See: *The Cedarbrae Hotels & Homes Ltd. case et al* [1973] OLRB Rep. Jan. 44; *The Wentworth Arms Hotel Limited case* [1966] OLRB Rep. May 138; *The Caswell Hotel Ltd. case* [1970] OLRB Rep. 446). That is to say, the Board will determine the prime purpose of the area of the employer's establishment where the employee is assigned and thereby will ascertain the purpose of employment commensurate with the customer's requests. If the predominant theme of the area appears to be dining, notwithstanding the availability of alcoholic beverages, then the employee will be excluded from the beverage unit; if the predominant theme is the serving of beverages, notwithstanding the availability of food, then the employee will be included in the unit. In developing the primary purpose test the Board appears to have borne in mind prevailing liquor licencing requirements of the establishment under consideration and the permissible quotas of food and beverage permitted to be served in accordance with the nature of the licences accorded the employer.

6. There are three beverage rooms located on the hotel's premises. In both "The Olympia Room" and "The Hall of Fame" bottled and draft beer are served. The "Trophy Lounge" provides liquor as well as beer to its patrons. These rooms are physically adjacent to a lobby where a snack bar is maintained. A customer seated in the beverage room may at any time approach the snack bar to purchase a hamburger, hot dog etc. etc. as may suit his fancy. The waiters' principal duties are to serve the beverages ordered by the customer and clear the tables of glasses and waste after the customer has left. The Board is clearly of the view that persons employed (including porters) in the Olympia, Hall of Fame and Trophy Rooms are engaged primarily in bargaining unit work and ought to be included in the appropriate craft unit heretofore referred to in paragraph 3. Furthermore employees assigned to the snack bar are primarily engaged in the serving of food and ought to be excluded from the unit.

7. The respondent maintains a coffee shop known as "The Pagoda Room". Breakfast, lunch and dinner meals are served in The Pagoda Room as well as miscellaneous snack foods. The restaurant opens at 7 a.m. and closes at 8 p.m. Commencing at 12 noon a customer may order an alcoholic beverage from a waitress who is normally assigned to the "Hook and Ladder Club". She is required to take the order and proceed to the service bar located in the club area to retrieve the drink and thereupon serve the customer. There are approximately ten employees assigned to service the coffee shop and the Board is of the view that their functions are primarily directed towards the service of food and ought therefore to be excluded from the appropriate bargaining unit.

8. The respondent maintains approximately eight waitresses on a rostrum who are on call to service its banquet facilities. In the event alcoholic beverages are served at an affair both a waitress from the dining room portion of "The Hook and Ladder Club" and a waiter from one of the beverage rooms are assigned to cater to the requirements for satisfying those in attendance with alcoholic requests. The Board however is of the view that the waitresses while assigned to the respondent's banquet facilities are primarily engaged in the serving of meals catered by the respondent in accordance with the instructions received by the customer. The Board is therefore satisfied that these waitresses ought to be excluded from the bargaining unit.

9. The area comprising "The Hook and Ladder Club" consists of one large room. The room is divided into a dining room area and a club area. The only physical demarcation separating the one area from the other is a downstep from the dining room. During the day lunches are served in the dining room area and the customer may, if he wishes, order an alcoholic beverage. The club area during the luncheon period provides buffet services to its customers. Waitresses are retained for the purpose of serving alcoholic beverages and coffee and desserts to the patrons. They are required to clear away the tables once the customer has finished his meal. The club area is maintained for the service of alcoholic beverages to the club and The Pagoda Room during the course of the day. For the purpose of servicing the alcoholic demands of the customer two service bars are maintained. One is a permanent bar with seating arrangement for approximately ten persons. The other is a portable bar that services both the dining room area and a portion of the club area.

10. The evening dining and entertainment period is the busiest time for use of the club's facilities. The business orientation of the club is premised on headline performers who attract customers through the respondent's advertising policies. The evidence indicates that reservations are accepted for dining in advance. Waiters are retained to serve the customers with respect to meals and to beverages. The beverages once ordered are obtained from the service bar located in the club area. Depending on the draw of the headline performer the dining facilities are extended into the club area. Tables maintained in the club area for the servicing of beverages are applied for dining facilities. And the cocktail waitresses who are normally assigned to the club area serve meals and beverages in a like manner to the waiters assigned to the dining area. The evidence also establishes that the waitresses assigned to service the club area are retained during the day to serve customers who patronize the respondent's buffet facilities. It is clear that the whole area comprising both the dining and club area are structured towards the serving of both food and drink. In the event that business is slow with respect to dining clientele then the area reserved for the club is peopled with customers who wish to merely enjoy the show and confine their gratification to alcoholic beverages. Nevertheless, should the reservations for dining fill the room's capacity then these customers would take precedence over the beverage clientele. In other words, "The Hook and Ladder Club" is geared towards servicing its customers with both food and alcoholic beverage. In the event the dining customer does not respond to a particular performer then space is accordingly made available for the drinking customer.

11. The Board has discerned from the regulations enacted pursuant to *The Liquor Licence Act* R.S.O. 1970 c.250 a practical business concern inducing the respondent to emphasize the servicing of food at its night club establishment. Special requirements exist that indicate that in order for dining room and dining lounges to retain their liquor licences they must maintain regular meal services and the furnishings of these establishments must provide an atmosphere suitable for comfortable dining. Hotels are particularly mentioned in that save for self-service cafeterias, every holder of a dining room, dining lounge or entertainment lounge licence must provide table service of food on the premises. Furthermore entertainment lounges must provide food at all times during its hours of operation. The regulations also indicate that the total gross alcoholic receipts from dining room and dining lounge establishments cannot exceed gross food receipts. And particularly with respect to entertainment licences the gross receipts must be maintained at a 30/70 food/liquor ration. In other words, it is essential to the respondent's business in providing night-club entertainment that it service its customers with food. (See; O. Reg. 1008/75; with respect to information dealing more specifically with the requirements of the regulations under *The Liquor Licence Act*).

11. On the basis of the foregoing information the Board is of the view that both by practice and in law the premises housing "The Hook and Ladder Club" are by necessity geared primarily towards the service of food. In reaching this conclusion however the Board discerns that the servicing of alcohol although integral to the business operations of the club could not be permitted unless the serving of food formed a primary vehicle justifying the employment of beverage room employees. The Board therefore finds that employees assigned to "The Hook and Ladder Club" ought to be excluded from the appropriate bargaining unit. For reasons similar to the foregoing, we further find that room service personnel engaged in providing guests with either food and alcohol ought to be likewise excluded.

12. As a result, the Board finds that the bargaining unit heretofore determined to be appropriate by agreement of the parties ought to be confined to employees engaged in the respondent's Trophy Room, Hall of Fame Room and Olympia Room as of the date that the application was made.

13. Having regard to the information in the Labour Relations Officer's Report, the Board is satisfied on the basis of all the evidence before it that more than fifty-five per cent of the employees of the respondent in the bargaining unit at the time the application was made, were members of the applicant on October 29, 1975, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

14. A certificate will issue to the applicant.

1331-75-U Libby, McNeil & Libby of Canada Limited, (Applicant) v. Local 107, Canadian Union of Operating Engineers and Clifford J. Scott, (Respondents).

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members P. J. O'Keeffe and J. E. C. Robinson, Q.C.

APPEARANCES: *R. A. Werry, W. G. Phelps, R. Oke and L. Holly for the applicant; C. G. Paliare, C. J. Scott and M. Williams for the respondents.*

DECISION OF FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBER P. J. O'KEEFFE, March 4, 1976:

1. Following the disposition of certain preliminary matters pursuant to the decision of the Board dated January 22, 1976, this application for consent to institute a prosecution against the named respondents, was listed for continuation of hearing on the merits.

2. Having regard to the totality of the evidence as adduced in this regard and taking into account the representations of the parties thereto, we are satisfied that arguable points of law and fact exist with respect to the violations of Sections 65 and 67 of *The Labour Relations Act*.

3. Nevertheless, and having regard to the principles as set out in the *Toronto Western Hospital* case [1972] OLRB Rep. (October) 851, the granting of consent to prosecute, pursuant to the provisions of Section 90(1) of the Act, is a matter left to the discretion of the Board. The evidence in the present case discloses the following:

- (a) the unlawful strike which commenced on September 22, 1975, was the first strike engaged in by these employees since the respondent trade union first began to represent them some twenty years ago;
- (b) the picketing activities engaged in by these employees at the applicant's premises were of a non-violent nature;
- (c) these picketing activities immediately ceased upon notification by the officials of the respondent trade union of the Board's oral declaration of unlawful strike and cease and desist orders rendered at the hearing held on September 26, 1975, (See Board File No. 0978-75-U);
- (d) the employees thereupon, in keeping with the Board's further oral direction in this regard, made themselves immediately available for work, awaiting the applicant's instruction in this respect;
- (e) the employment relationship since the issuance of the Board's aforementioned declaration appears to have once again become stabilized.

4. During the course of the hearings, the parties were in accord with respect to applying the testimony as adduced before us to both this consent to prosecute application and also to the Reference from the Minister (Board File No. 1631-75-M). Pursuant to the Board's decision in that matter dated March 3, 1976, our opinion to the Minister was that she has the authority to appoint an arbitrator in the circumstances. Accordingly, it would appear that the applicant will be pursuing at arbitration further remedies as against the respondents which may be available to it.

5. Having regard therefore to the factors as set out in Paragraph #3 herein, and taking into consideration that the matters giving rise to the strike have not only been extensively dealt with in proceedings before two separate divisions of this Board, but are now destined for further adjudication before an arbitrator, we are of the opinion that no useful purpose would be served in permitting the parties access to yet another forum with respect to the litigation of their dispute. Put in other terms, we find that to permit the prolongation of such a dispute before the Provincial Court, would not, in all of the circumstances, "further harmonious relations" between the parties in keeping with the spirit of the preamble to the Act.

6. In view of the foregoing, this application is dismissed.

DECISION OF J. E. C. ROBINSON, Q.C.

I agree with that part of my colleagues decision wherein they find that there are arguable points of law and fact existing with respect to the violations of sections 65 and 67 of The Labour Relations Act.

I am unable to agree with the balance of their decision, wherein they exercise their discretion and dismiss the application.

In my opinion the unlawful strike was a calculated and premeditated action undertaken by the respondents in favour of the normal steps within the arbitration procedure of the collective agreement, and I can see no reason why such unlawful action should, in fact, be condoned by the Board in the exercise of its discretion.

To me, the exercise of the Board's discretion in dismissing the application will have an adverse affect in furthering harmonious relations between the parties.

Accordingly, I would not exercise my discretion, but rather would grant consent to the applicant to institute a prosecution against the respondents for the alleged violation of sections 65 and 67 of The Labour Relations Act.

1200-75-U Amalgamated Meat Cutters and Butcher Workmen of North America, Complainant, v. **Primo Importing & Distributing Co. Limited**, Respondent.

BEFORE: D. H. Kates, Vice-Chairman, and Board Members J. D. Bell and O. Hodges.

APPEARANCES: *J. Sack and V. Gentile for the complainant; Mrs. S. Block for the respondent.*

DECISION OF D. H. KATES, VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES, March 18, 1976:

1. This is a complaint filed under section 79 of the Act alleging that the grievors Natale Mirabelle and Giuseppe Trocchia were discharged for their trade union activities contrary to section 58(a) of the Act.
2. The complaint with respect to Natale Mirabelle was withdrawn in that the parties settled the matter during the course of the proceedings.
3. In early August, 1975, the complainant trade union commenced a campaign to organize the respondent's plant employees. The respondent is engaged in the food processing business in Metropolitan Toronto. Approximately three hundred plant employees are engaged in various departments of its plant operation. Mr. Giuseppe Trocchia was approached at that time to lend his support to the complainant's cause. He supplied Mr. Vin-

3. Nevertheless, and having regard to the principles as set out in the *Toronto Western Hospital* case [1972] OLRB Rep. (October) 851, the granting of consent to prosecute, pursuant to the provisions of Section 90(1) of the Act, is a matter left to the discretion of the Board. The evidence in the present case discloses the following:

- (a) the unlawful strike which commenced on September 22, 1975, was the first strike engaged in by these employees since the respondent trade union first began to represent them some twenty years ago;
- (b) the picketing activities engaged in by these employees at the applicant's premises were of a non-violent nature;
- (c) these picketing activities immediately ceased upon notification by the officials of the respondent trade union of the Board's oral declaration of unlawful strike and cease and desist orders rendered at the hearing held on September 26, 1975, (See Board File No. 0978-75-U);
- (d) the employees thereupon, in keeping with the Board's further oral direction in this regard, made themselves immediately available for work, awaiting the applicant's instruction in this respect;
- (e) the employment relationship since the issuance of the Board's aforementioned declaration appears to have once again become stabilized.

4. During the course of the hearings, the parties were in accord with respect to applying the testimony as adduced before us to both this consent to prosecute application and also to the Reference from the Minister (Board File No. 1631-75-M). Pursuant to the Board's decision in that matter dated March 3, 1976, our opinion to the Minister was that she has the authority to appoint an arbitrator in the circumstances. Accordingly, it would appear that the applicant will be pursuing at arbitration further remedies as against the respondents which may be available to it.

5. Having regard therefore to the factors as set out in Paragraph #3 herein, and taking into consideration that the matters giving rise to the strike have not only been extensively dealt with in proceedings before two separate divisions of this Board, but are now destined for further adjudication before an arbitrator, we are of the opinion that no useful purpose would be served in permitting the parties access to yet another forum with respect to the litigation of their dispute. Put in other terms, we find that to permit the prolongation of such a dispute before the Provincial Court, would not, in all of the circumstances, "further harmonious relations" between the parties in keeping with the spirit of the preamble to the Act.

6. In view of the foregoing, this application is dismissed.

DECISION OF J. E. C. ROBINSON, Q.C.

I agree with that part of my colleagues decision wherein they find that there are arguable points of law and fact existing with respect to the violations of sections 65 and 67 of The Labour Relations Act.

I am unable to agree with the balance of their decision, wherein they exercise their discretion and dismiss the application.

In my opinion the unlawful strike was a calculated and premeditated action undertaken by the respondents in favour of the normal steps within the arbitration procedure of the collective agreement, and I can see no reason why such unlawful action should, in fact, be condoned by the Board in the exercise of its discretion.

To me, the exercise of the Board's discretion in dismissing the application will have an adverse affect in furthering harmonious relations between the parties.

Accordingly, I would not exercise my discretion, but rather would grant consent to the applicant to institute a prosecution against the respondents for the alleged violation of sections 65 and 67 of The Labour Relations Act.

1200-75-U Amalgamated Meat Cutters and Butcher Workmen of North America, Complainant, v. **Primo Importing & Distributing Co. Limited**, Respondent.

BEFORE: D. H. Kates, Vice-Chairman, and Board Members J. D. Bell and O. Hodges.

APPEARANCES: *J. Sack and V. Gentile for the complainant; Mrs. S. Block for the respondent.*

DECISION OF D. H. KATES, VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES, March 18, 1976:

1. This is a complaint filed under section 79 of the Act alleging that the grievors Natale Mirabelle and Giuseppe Trocchia were discharged for their trade union activities contrary to section 58(a) of the Act.
2. The complaint with respect to Natale Mirabelle was withdrawn in that the parties settled the matter during the course of the proceedings.
3. In early August, 1975, the complainant trade union commenced a campaign to organize the respondent's plant employees. The respondent is engaged in the food processing business in Metropolitan Toronto. Approximately three hundred plant employees are engaged in various departments of its plant operation. Mr. Giuseppe Trocchia was approached at that time to lend his support to the complainant's cause. He supplied Mr. Vin-

cent Gentile, the complainant's business agent, with the names and addresses of employees to be approached to sign membership cards. Mr. Trocchia is also said to have secured the membership cards of a number of employees.

4. Mr. Gentile indicated that the campaign was progressing well until the discharge of Messrs. Trocchia and Mirabelle on October 27th and 28th respectively. He described the grievors as "key" participants in the organizational drive. The effect of their terminations paralyzed the campaign and upon advice of his organizational committee the campaign was aborted.

5. Members of the respondent's management staff learned of the complainant's campaign in early September. Apparently Mr. Angelo Cappozzi the plant manager was told of the complainant's efforts by the foreman of the pasta department, Mr. Scrievano. He thereupon told Mr. Arthur Pellicione, the general manager of the respondent's operations. Mr. Pellicione advised his plant manager, "not to worry about it. Let it go. Take it for what its worth". It seems that rumours of trade union activity had occurred before and the respondent's policy was simply to allow events to follow their normal course. The respondent through its witnesses denied any knowledge of Mr. Trocchia's role in the complainant's organizational campaign.

6. The respondent indicated in its reply to the complaint that the grievor was discharged for just cause. The evidence is clear that Mr. Trocchia was a nervous, volatile individual whose temper often manifested itself in his dealings with his colleagues at work. There were particular incidents recited to us and confirmed by the evidence that the grievor did not react well to stress created by the mistakes and shortcomings of others. The Board notes particularly two incidents relating to the break down of the pasta machines the last of which had occurred approximately a year prior to the grievor's discharge. On both occasions Mr. Trocchia either reprimanded the ladies responsible or made offensive gestures expressing his intolerance of their inattention to their job responsibilities. He was warned at the time to mind his own business and henceforth to report the shortcomings of other employees to their supervisors. Mr. Trocchia complained of absorbing the mistakes of his foreman, Mike Tedesco. He stated that he did not appreciate being forced to bear the brunt of his supervisor's errors and thereby compelled to shoulder the blame for poor production.

7. Mr. Tedesco's personal assessment of the grievor's temperament appeared to the Board to be most even handed. He confirmed that Mr. Trocchia was indeed a man susceptible to emotional outbursts. On many occasions he restrained him from taking rash action in response to particular pressures of the job. He viewed Mr. Trocchia as a competent employee who satisfactorily performed his job. He also indicated notwithstanding the nature of his temperament, that the grievor was basically a good person who was gentle and who would not hurt anyone. Against this background occurred the culminating incident allegedly precipitating the grievor's termination.

8. On Saturday, October 25th, 1975 the grievor observed Mr. Constantino Frisoli, a mechanic, along with a helper working on one of the pasta machines. Apparently Mr. Frisoli sought the permission of Mr. Tedesco to use the helper for purposes of cleaning the machine while he serviced the motor. The grievor was of the view that Frisoli often took advantage of the helpers and chose this particular occasion to precipitate an issue. The particular helper assigned to assist Mr. Frisoli from time to time worked with the grievor in

preparing pasta. In any event a confrontation took place. Both Frisoli and the grievor engaged in a heated argument. When Mr. Tedesco appeared on the scene he asked them to stop their argument. The altercation was free of physical exchange although it was said that the grievor made a threatening gesture by placing his cap between his teeth thereby simulating what he would like to do to Frisoli.

9. Mr. Trocchia was so upset after the exchange that he left the work premises. Mr. Tedesco in the normal course reported the incident to Mr. Cappozzi with the recommendation that the grievor be censured for his conduct. Mr. Tedesco in a most candid fashion agreed that he did not think that the incident ought to have precipitated the grievor's termination. Nor was he consulted by Mr. Cappozzi for his opinion. He learned of the discharge after it was effected when the grievor advised him at the commencement of the afternoon shift.

10. Mr. Pellicione told us that Mr. Cappozzi discussed the grievor's situation with him on the forenoon of the day of the discharge. It was Mr. Cappozzi's view that the incident ought not to be tolerated. Mr. Pellicione indicated that if that were the case it was best that he be let go but added that it was Cappozzi's decision to make. At that time both Messrs. Cappozzi and Pellicione denied any knowledge of the grievor's union activities.

11. On Saturday, November 2nd Mr. Cappozzi held an informal meeting with some workers at the end of the evening shift. Apparently there was some dissatisfaction amongst the employees with respect to shift differential premiums and fringe benefits. At that time Mr. Cappozzi announced that the respondent would consider their grievances and respond thereto. Mr. Pellicione advised the Board that the auditors had informed him that the respondent's financial position was such that it could absorb the costs of improving the employees' benefits in these areas. As a result Mr. Pellicione directed that a memorandum dated November 5th be attached to the employees' pay cheques announcing that the company in future would be absorbing 100% of the OHIP and Group Insurance costs (an increase of 50%). In addition the company states;

"The company is able to make the above announcement due to the continued support and co-operation that you have given in the past *and hopefully in the future.*"

[emphasis added]

12. Mr. Pellicione stated that the increases in benefits (which included an increase in the staff premium) was independent of the complainant's organizational campaign. He agreed that the added benefits were merely coincidental with the complainant's efforts. Mr. Cappozzi during the course of his cross-examination described the meeting of employees of November 2nd but could not recall that a memorandum had issued three days later confirming the increases. He too denied that the meeting pertained to the complainant's organizational efforts. Mr. Frisoli, the grievor's antagonist in the discharge incident, told the Board that his mind was a complete and utter blank with respect to the increased benefits. In addition, Mr. Frisoli denied any conversation with the grievor whereby he was asked whether a union organizer had approached him at his home.

13. The only evidence adduced before us linking the trade union activities of Mirabelle and Trocchia to members of the respondent's supervisory staff was related by the grievors. Mr. Trocchia stated that over a period of several weeks he had discussions with Mr.

Scriveano. At one such discussion Mr. Scriverano is said to have told the grievor that, "The trade union is no good. We should not let it come in because it is bad for the workers. They would get all the rights they got at Lancia Bravo. The company will give what it could so long as they did not bring in the trade union." And Mr. Mirabelle testified that Mr. Orlando DeLuca, a supervisor (or lead hand), indicated to him in the context of the increases in OHIP and Group Insurance benefits that there was no need to bring in a trade union. Neither Messrs. Scriverano and DeLuca although in attendance at the Board hearings were called by the respondent to adduce evidence.

14. Finally, Mr. Trocchia testified that on or about October 4, 1975 he was asked by Mr. Frisoli whether a trade union organizer approached him at his home. Apparently Mr. Frisoli had heretofore been approached to sign a card. He asked Mr. Trocchia what he ought to do. Mr. Trocchia related that he was anxious for him to sign a card but indicated that it was up to him. Mr. Frisoli agreed in cross-examination that he had a conversation with his foreman Gino de Paysia after the grievor's discharge. Apparently Mr. de Paysia wanted an explanation for the altercation. He denied that Mr. de Paysia told him that the grievor was fired for his trade union activities and not on account of the pasta machine incident.

15. In determining the issue in this case the respondent must satisfy us on a balance of probabilities that the grievor was not discharged for his trade union activities. The crucial question in resolving that issue still remains, notwithstanding the recent amendments to the Act, the determination of whether the employer had knowledge of the grievor's trade union activities and thereby inferentially may be deemed to have played some part in its resolve to discharge. It is quite clear that the extent of a grievor's participation during the course of an organizational campaign is peculiarly within the knowledge of a complainant trade union. When evidence is adduced by a complainant in support of the proposition that trade union activity played a part in the discharge, especially where it is alleged that the grievor was a "key" participant, it is anticipated that all relevant evidence will be forthcoming with respect to his role in the campaign. Such evidence is crucial to the drawing the inference of employer knowledge. In the circumstances related herein it may very well have been helpful to learn if the grievor, as a key participant, attended organizational meetings of employees where the advantages of trade unionism were discussed. Mr. Gentile mentioned that the organizational committee advised after the discharge had been effected that the campaign ought to be terminated. Was the grievor a member of that committee? The Board was also advised that the grievor was an organizer responsible for having secured a number of membership cards. Indeed Mr. Gentile indicated that he had in his possession the cards that Mr. Trocchia was responsible for securing. Why was not this evidence forthcoming? Surely it is crucial to the drawing of the inference of employer knowledge of the grievor's activities for the complainant to adduce the circumstances under which cards were secured in a prospective bargaining unit numbering approximately three hundred employees. The Board is of the view that failure by a complainant to adduce such evidence, if available, is at the grievor's peril having regard to the facts and circumstances of the particular case.

16. Notwithstanding our concerns with respect to the lack of convincing evidence with respect to establishing the grievor as a key man to the campaign, we are satisfied that the uncontradicted evidence does show that the grievor participated to some extent in the aborted campaign. Firstly, we are satisfied that the grievor may very well have provided lists of employees to the complainant for purposes of contacting them for membership support.

Secondly, we have no reason to doubt Mr. Trocchia's testimony with respect to his conversation with Mr. Frisoli as to whether Mr. Frisoli ought to sign a card. In the latter regard we find Mr. Frisoli's testimony inadequate. He appeared to have a very convenient memory with respect to information that was adverse to the respondent's interests. Finally, the Board accepts Mr. Trocchia's testimony with respect to the Scrievano conversations. In our view the reference allegedly made by Mr. Scrievano to the organizational campaign at *Lancia Bravo* lent an air of authenticity to the contents of the conversation dealing with the necessity of a trade union in the face of the impending benefits to be conferred on employees. In being deprived of Mr. Scrievano's interpretation of that conversation, we are compelled to accept the grievor's recitation as accurate. Furthermore it ought not be disregarded that Mr. Cappozzi indicated that it was the same Mr. Scrievano who first informed him of the complainant's organizational campaign in September, 1975. And Mr. Pellicione's reaction to Mr. Cappozzi when informed of the campaign was simply to advise him "not to worry". It seems that Mr. Cappozzi must have exhibited some concern to inspire Mr. Pellicione to calm his plant manager.

Shortly after the discharge Mr. Cappozzi met a group of workers and entertained their grievances with respect to shift differential and other grievances. Mr. Cappozzi could not recall the memorandum granting the employees these benefits. Indeed, we are constrained to accept the respondent's explanation of the increased benefits as being merely coincidental with the applicant's organizational campaign. Surely, the reward of employees' "future co-operation" in the context of the concurrent campaign underlies the only purpose of the employer in according its employees these added benefits. We are of the view that the respondent at all material times exhibited an anti-union animus that would find expression in effecting a discharge for the purpose of frustrating a trade union's organizational campaign.

18. Finally, the Board is not satisfied that the respondent has established a case for just cause for discharge as alleged in its reply to the complaint. To the extent that that purports to be the reason for the discharge we must, with respect, disagree. The Board is satisfied that the grievor's temperament precipitated difficulties with his co-workers that may have necessitated disciplinary recourse by the employer in the past. Furthermore, we reject any suggestion that the altercation with Mr. Frisoli on October 24th was in any way staged or contrived for the purpose of entrapment. Nevertheless, we are satisfied that in the face the grievor's past record the incident was exploited to disguise the real reason for the discharge. In this regard, we accept the testimony of Mr. Tedesco with respect to his assessment of the situation. Mr. Trocchia's outburst was without excuse and he ought to have been censured for it. Nevertheless, we are not convinced in a manner similarly expressed by Mr. Tedesco that it ought to have caused his discharge. Indeed, the Board finds the contrary to be the case.

19. In the result, the Board finds that the respondent has failed to satisfy us that the grievor was discharged for reasons other than his trade union activity. The Board directs that he be reinstated on terms to be determined by the parties. The Board will remain seized in the event a satisfactory settlement with respect to terms cannot be reached.

DECISION OF BOARD MEMBER J. D. BELL.

1. I am satisfied that the respondent has established a case for just cause for discharge. The majority states "Mr. Trocchia's outburst was without excuse and he ought to be

censured for it". They further state "We reject any suggestion that the altercation with Mr. Frisoli on October 24th was in any way staged or contrived for the purpose of entrapment". In view of the grievor's past record of interference I believe this last outburst triggered his discharge.

2. This, coupled with the lack of evidence that the grievor was a key participant in the union's organizational campaign, compels me to find that the grievor was discharged for cause and not union activity.

3. I would dismiss the complaint.

0945-75-M The Toronto Building and Construction Trades Council,
(Applicant) v. **Napev Construction Limited and Vepan Leaseholds Limited**,
(Respondents).

BEFORE: Rory F. Egan, Acting Chairman, and Board Members H.J.F. Ade and P.J. O'Keeffe.

APPEARANCES: *A.M. Minsky for the applicant; R.C. Fillion and S. Ambrose for the respondent; Norman A. Endicott, Brian Iler and John Meiorin for Local 1 of the Bricklayers, Masons Independent Union of Canada.*

DECISION OF THE BOARD: March 19, 1976

1. In its decision dated October 7, 1975, arising out of an application made under section 1(4) and section 112a of *The Labour Relations Act*, the Board decided to treat the respondents as constituting one employer for the purposes of the Act pursuant to the provisions of section 1(4). The Board further found that the respondents were therefore bound by the terms of a collective agreement dated March 14, 1974 made between the applicant and its affiliated unions, on the one hand, and Napev Construction Limited, on the other hand.

2. The grievance which was referred to the Board under section 112a of the Act contained an allegation of a breach of section 3 of the collective agreement at a job site on Kerr Street in Oakville.

3. Section 3 of the collective agreement provides as follows:

3. The Company agrees that it will employ only members of the unions affiliated with the Council and will let contracts or subcontracts only to individuals or companies whose employees are members in good standing in the unions affiliated with the Council and will do all things necessary to insure that only members of the unions affiliated with the Council are employed in construction work in which the Company is engaged.

4. The grievance was particularized so as to indicate the trade areas in which the breaches were alleged to have occurred. For the purpose of the issue presently before the Board, Item 1(e) of the violation is the only one relevant. That item refers to masonry work, including labour work relating thereto. The evidence indicated that the work involved was bricklaying. The applicant claimed this work was being done by persons other than members of Bricklayers, Stone Masons and Tilesetters Local 2, affiliated with Bricklayers, Masons and Plasterers International Union of America, one of the unions affiliated with the Council.

5. The Board, in its decision of October 7, 1975, found that the respondents had breached the collective agreement as alleged by the applicant. The breach occurred as a result of the use by the respondents of a subcontractor who did not employ members of the applicant union as bricklayers on the site.

6. By letter dated November 7, 1975 Local 1 of the Bricklayers, Masons Independent Union of Canada (hereinafter called "Local 1") requested the Board to add it as a party to the application. It further requested the Board to reconsider the decision of October 7, 1975. Local 1 is, of course, not affiliated with the applicant.

7. Local 1 submitted that it was an interested party and ought to have had notice of the proceedings. In support of that submission it alleged the following: Local 1 entered into a collective agreement with Prime Construction (hereinafter called "Prime") on July 15, 1974. This agreement covers all employees of performing bricklaying work. Prime in turn entered into a commercial contract with Vepan Leaseholds Limited for the bricklaying work on the job-site on Kerr Street to which reference has been made above.

8. Local 1 further claims that by reason of decision of the Board of October 7, 1975, its members who were employed by Prime were laid off and were therefore adversely affected by the decision.

9. The matter was listed for hearing by the Board in order to allow Local 1 to show cause why it should be granted status to intervene in these proceedings for the purpose of making representations with respect to the jurisdiction of the Board to make the order it did make pursuant to section 1 subsection (4) of the Act in its decision of October 7, 1975.

10. At the hearing Local 1 made it clear that its request for intervention was confined solely to the proceedings under section 1 subsection (4) of the Act, and conceded that it had no status to intervene in the arbitration proceedings referred to the Board under section 112a of the Act.

11. The applicant argued that Local 1 is not a party having interest in the proceedings under section 1(4); that it does not represent employees of either of the respondents; and that any interest Local 1 may have in the 1(4) application is too remote, factually and legally, to be recognized.

12. Section 1 subsection (4) of the Act reads:

(4) Where, in the opinion of the Board, associated or related activities or business are carried on, whether or not simultaneously, by or

through more than one corporation, individual, firm, syndicate or association or any combination thereof, under common control or direction, the Board may, upon the application of any person, trade union or council of trade unions concerned, treat the corporations, individuals, firms, syndicates or associations or any combination thereof as constituting one employer for the purposes of this Act and grant such relief, by way of declaration or otherwise, as it may deem appropriate.

13. The question to be determined by the Board under section 1(4) is whether where employers are carrying on associated or related activities under common control or direction, the Board will elect to treat them as one employer under that section of the Act.

14. The parties of prime and direct interest in proceedings under section 1(4) are the companies said to be associated or related (in this case Napev Construction Limited and Vepan Leaseholds Limited), their respective employees, unions demonstrating representational rights for their employees, or unions who are bargaining agents for employees of the named corporations (in this case, the applicant). The parties directly affected by the decision of the Board under section 1(4) of the Act are therefore the applicants and the respondents in the original application. These are the parties of interest within the meaning of the Act.

15. Where attempts have been made to intervene in certification proceedings, the Board has consistently held that, in order to safeguard the rights of parties originating proceedings, and with a view to eliminating delay by parties claiming an interest, a would-be intervener must meet certain requirements. These requirements are deemed necessary in the field of industrial relations where time is indeed of the essence in order to avoid delay, multiplicity of proceedings and frustration of the purposes of the Act by parties who have no real representative status with respect to the employer and the employees involved. The Board has always required that an intervener must be either an employee in the bargaining unit to which the proceedings relate or a union holding representational authorization from one or more persons in the bargaining unit, or be the bargaining agent for employees in the bargaining unit. In the absence of these requirements, intervention has been denied.

16. In the present case, Prime Construction is not one of the related or associated companies named in the application under section 1(4), and this for obvious reasons. Furthermore, the persons whom Local 1 purports to represent are not employees of either Napev or Vepan but are in fact employees of the subcontractor, Prime. They are therefore not employees in the bargaining unit affected by the Board's decision under section 1(4). Local 1 therefore fails to meet the requirements for intervention referred to above. These requirements have application to the present circumstances.

17. There is a rule at common law which states that a person who would only be commercially and incidentally injured by a judgment is not entitled to be made a party to an action on the ground of such prospective injury. (See *Moser v. Marsden* (1892), 1 Ch. 487 at 490 (C.A.)) The plaintiff in that case was the patentee of a machine and brought an action against the defendant for using a machine which he alleged was an infringement of his patent. The foreign manufacturer of the machine applied to be added as a defendant alleging that a judgment in the action would injure him and that the defendant would not properly defend the action. The court held that the foreign manufacturer was not directly inter-

ested in the issues between the plaintiff and the defendant, but would only be indirectly or commercially affected and consequently had no right to intervene.

18. This case has been followed in Ontario in *Westgate v. Sudbury Rand Mines Ltd.*, (1940) O.W.N. 258 (Master Barlow) at 259:

The law is neatly stated in Holmstead, 5th ed., p. 656 as follows:

‘A person who would be commercially and incidentally, but not legally and directly, injured by a judgment being obtained against the defendant in an action, is not entitled, on the ground of such prospective injury, to be made a party to the action.’

See *Moser v. Marsden*, (1892) 1 Ch. 487.

19. On consideration of the foregoing and the relevant evidence, the Board finds that Local 1 was at all material times lacking in status as a party having an interest within the meaning of the Act enabling it to notice of and participation in the 1(4) proceedings in this matter. Furthermore, the determination sought and made under section 1(4) clearly could not disturb the bargaining relationship between Local 1, its members, and Prime Construction. In any event, any injury that might have been anticipated at the commencement of the proceedings or which may have occurred as the result of the decision of the Board could only arise commercially and incidentally but not legally and directly. In addition, the claims of Local 1 are too remote in time and in law to warrant its addition as a party to these proceedings.

20. The request of Local 1 that it be added to these proceedings is accordingly dismissed.

1177-75-R United Steelworkers of America, (Applicant) v. N & D Supermarket Limited, (Respondent) v. Group of Employees, (Objectors).

BEFORE: Kevin M. Burkett, Vice-Chairman and Board Members J.D. Bell and P.J. O’Keeffe.

APPEARANCES: *Lorne Ingle and Harold Brooks for the applicant; Clifford N. Sutts for the respondent; William A. MacMillan for the objectors.*

DECISION OF THE BOARD: March 10, 1976

1. The name “N. & D. Supermarkets Ltd.” appearing in the style of cause of this application as the name of the respondent is amended to read: “N & D Supermarket Limited.”

2. This is an application for certification in which an allegation arose with respect to the non-payment of the required one dollar by one of the employees for whom the union had submitted membership evidence.

3. The evidence establishes that in fact one Mark Seegar, a part-time employee with the respondent company, did not pay and has not since paid the required one dollar. In the course of the Board's inquiry into this matter, Mr. A.E. Munroe, the Legislative Director of the applicant union and the person who signed Form 8 on behalf of the applicant, testified that prior to signing the Form 8 declaration he called Mr. H. Brooks the International Representative of the applicant who had responsibility for the organizing campaign and received his assurance that each person on whose behalf membership evidence had been submitted had paid the \$1 and that there were no other irregularities that should be brought to the Board's attention. The evidence establishes, however, that while Mr. Brooks had given instructions to the collectors and had made subsequent inquiries of Mr. Varley, the local president, Mr. Varley had not made inquiries of the collectors or of Mr. Kerr, the employee co-ordinator, with respect to the information which must be attested to on the Form 8 declaration. Furthermore, the Board having reviewed the evidence of Mr. Kerr and that of Messrs. Ciccone and Conkey is not satisfied that Mr. Kerr made the proper and necessary inquiries in all cases.

4. Paragraph 3 of Form 8 reads:

“(Where the documentary evidence consists in part of receipts or other acknowledgments of the payment on account of dues or initiation fees) On the basis of my personal knowledge and inquiries that I have made, I state that the persons whose names appear on the receipts or other acknowledgments of the payment on account of dues or initiation fees are the persons who actually collected the moneys paid on account of dues or initiation fees and that each member, on whose behalf a receipt or an acknowledgment of payment is submitted has personally paid in money the amount shown thereon on his own behalf to the person whose name appears on his receipt or acknowledgment of payment as collector, EXCEPT IN THE FOLLOWING INSTANCES:”

5. The knowledge which is required as a precondition to signing the Form 8 declaration was outlined in the *National Steel Car* case (1966) OLRB Rep. Jan. 738 wherein the Board stated:

“It is readily apparent that a person completing Form 9 (now Form 8) must be seized with some type of knowledge in order to satisfy the requirements of item 3 cited above. This knowledge may be personal knowledge (i.e.) knowledge gained by either acting as the actual collector or knowledge gained by being personally present and actually witnessing the transaction between the collector and the member wherein the membership card was signed and payment of money made by the member to the collector.

The other type of knowledge which is acceptable is that knowledge gained from inquiries made of the persons who actually acted as collectors, or the persons who made the necessary inquiries of the actual collectors.

The requirement that inquiries be made is obviously not an onerous one or one that imposes an undue burden on the applicant; however, the requirement is that *inquiries be made*.

In order that inquiries be meaningful it is obvious that they must be made after the event. Instruction given to collectors prior to the signing of members may be helpful or necessary in the carrying out of an organizing campaign, however, such instructions do not obviate the necessity of making the inquiries required for the proper completion of Form 9 (now Form 8). (See *Dominion Stores Limited Case*, O.L.R.B. monthly report, December 1964, p. 447).

In the instant case, Mr. Storey, prior to completing Form 9 (now Form 8) made inquiries of Mr. Cooke. However, Mr. Cooke had made no inquiries of Mr. Griffin and in turn Mr. Griffin had made no inquiries of other persons who had acted as collectors. It is readily apparent that the inquiries made by Mr. Storey were made of a person who had no direct knowledge of the collectors and the failure of Mr. Cooke and Mr. Griffin to make inquiries frustrated the purpose of Mr. Storey's inquiries. Where the officers of an applicant trade union have themselves frustrated the inquiries made by the person who completes Form 9 (now Form 8) and by their failure to follow through with their own inquiries, render the inquiries made by such person meaningless, we must find that Form 9 (now Form 8) in such circumstances cannot serve the purpose for which it was intended and in such circumstances is a nullity. In arriving at this conclusion, the Board has noted with approval the *Valley Transportation Company Limited Case*, O.L.R.B. monthly report, June, 1964, p. 140, wherein the Board said:

The Board must expect and insist that persons who file applications for membership cards and receipts and Form 9 (now Form 8) as evidence of membership, take all necessary precautions and care to ensure that the information contained therein is true and accurate. The Board is entitled to demand the highest standards of integrity, disclosure, and accuracy on the part of those who submit such evidence and where undisclosed inaccuracies of material facts are later brought to its attention, to take a strict view of them."

See also *Stanley Steel case* (1972) OLRB Rep. Feb. 181 and *Consumers Distributing Co. Limited case* (1974) OLRB Rep. June 350.

6. In the instant case Mr. Munroe did not make inquiries of the persons who had acted as collectors or of person(s) who made the necessary inquiries of the actual collectors and therefore the inquiries which he did make, for purposes of satisfying the requirements of Form 8, were "meaningless". This conclusion is not intended to imply that Mr. Munroe attempted to mislead the Board or to in any way impugn his integrity. The Board must find in the circumstances of this case, however, that the membership evidence submitted by the applicant does not meet the strict standards required by the Board.

7. In view of this finding it is not necessary for the Board to determine the other issues before it in this matter.

8. The application is dismissed.
-

0807-75-R United Steelworkers of America (Applicant) v. Triad-Triumph Ltd., (Respondent).

BEFORE: Rory F. Egan, Acting Chairman, and Board Members E. Boyer and J.E.C. Robinson, Q.C.

APPEARANCES: *Lorne Ingle for the applicant; Michael Gordon and J. Newsome for the respondent; Michael G. Horan for an employee objector.*

DECISION OF RORY F. EGAN, ACTING CHAIRMAN, AND BOARD MEMBER J.E.C. ROBINSON, Q.C., March 19, 1976:

1. This is a case in which the Board investigated charges or irregularities with respect to membership evidence, which charges were brought subsequent to the issuance of a certificate by the Board.
2. The allegations originated with Mr. Feran, a member of the bargaining unit, and were filed through his counsel. One allegation was to the effect that Sunafredo da Silva, a person who participated in the organizational campaign, exercised managerial functions. This matter had, however, been disposed of by the Board in an earlier decision in this application.
3. The remaining allegations set out by counsel for Mr. Feran are as follows:
 - (b) At or about the latter part of August, 1975, at the request of Mr. da Silva, John Feran approached Edward Porter with a view to having the said Edward Porter apply for membership in the applicant trade union. The application for union membership was signed by Edward Porter in presence of John Feran. The application, however, was countersigned by Scott Balfour who was not present when Edward Porter signed the application.
 - (c) One day later Scott Balfour and Sunafredo da Silva were in the automobile of Mr. da Silva speaking to Barry Coleman and Garry Harvey about applying for union membership. Apparently both of these persons were agreeable to making application but did not have the \$1.00 application fee. The monies in both cases were given to da Silva by Balfour. Da Silva then gave the money to Harvey and Coleman. The lender of the money, Balfour, apparently countersigned the application forms.
4. As a result of the allegations of Feran, the Board conducted an investigation and a hearing concerning the circumstances surrounding the membership cards called into question by Feran.

5. The organizational campaign of the applicant was carried out by da Silva and Balfour, who are two rank-and-file employees of the respondent and are not officers of the applicant. The organization commenced after da Silva and Balfour visited the office of the applicant union where they obtained membership cards and instructions on the proper method of organizing from Don Mayne, a temporary staff member of the applicant union. Da Silva directed the campaign but Balfour did the actual contact work with employees and was responsible for the signing up of the applicants and the collection of money. He kept in close contact with da Silva and kept the money and signed cards in the glove compartment of da Silva's car throughout the campaign.

6. With respect to the card filed on behalf of Coleman, the Board is satisfied that there was proper payment of one dollar by Coleman to Balfour. The payment was made from a two dollar bill produced by da Silva on behalf of Coleman and Henry. The Board is satisfied that Coleman paid back the dollar to da Silva within a day or so and it follows that a proper monetary sacrifice was made by Coleman with respect to his application for membership.

7. Evidence was also heard with respect to the card filed on behalf of Garry Henry. Da Silva, as indicated above, was involved in this transaction. During the course of his evidence, Henry was at first very uncertain as to whether or not he had borrowed the money from Balfour (the collector) to give to da Silva or from the latter to give to Balfour. He said that he was certain, however, that each of them had told him that he had to pay a dollar in order to join the union. His testimony was that he had told them that he did not have a dollar at the time. They in turn told him that money had to change hands to make the transaction legal and he had borrowed the dollar. He then testified that he recollected that da Silva, not more than a week later, asked him for repayment of the dollar and that he, Henry, gave it to da Silva in change. He said this recollection had not been present when he had signed a statement stating that he had not paid a dollar for membership fees. Da Silva, in his testimony, stated that he had a recollection of the loan and particularly of the repayment because it was made in change. Da Silva, however, in an obvious attempt to bolster this evidence, later testified that he had paid over the cash to Mayne. This statement is obviously inconsistent with the earlier evidence that Henry's fee had been paid with a two dollar bill. The evidence of both witnesses with respect to this transaction lacks credibility and cannot be accepted by the Board.

8. The Board was unable to conduct its usual interrogation of Porter because he had left the jurisdiction. In the course of its testimony, Balfour volunteered that as soon as he became aware of the situation described by Feran he realized that something was wrong and went to Porter to rectify the matter. The business of Porter, of course, makes it impossible to obtain his version of the transaction.

9. Balfour testified that he collected a dollar for each card he signed as a collector. Da Silva confirmed that Balfour turned over to him one dollar for each signed card. Da Silva in turn gave the cards and the money to Don Mayne and told him, in response to the latter's inquiry, that the cards had been collected properly. The following day, he had a further discussion with Pat Grasso, the staff representative of the applicant union with whom Mayne worked, concerning the hearing date. He stated that after that there was no further discussion about cards or money.

10. In addition to inquiries made into the allegations of Feran, the Board heard evidence with respect to the Form 8 which was filed in relation to the membership cards. Form 8 was completed by Mr. A.E. Munro, legislative director of the applicant, and was based upon inquiries he made of Pat Grasso. Grasso, as already indicated, had been in contact with da Silva. It is perfectly clear from the evidence, however, that no one, including da Silva, made any inquiry of Balfour with a view to ascertaining whether each applicant had paid a dollar notwithstanding the fact that he is shown on the great majority of the cards as the collector. Furthermore, there is one other person shown on a card as the collector of whom no inquiry was made with respect to the card on which his name appears. It is obvious on the evidence, therefore, that the requisite chain of inquiry as to the collection of fees was not properly completed with the result that Form 8 is defective and unacceptable to the Board as evidence of membership. (*National Steel Car Corporation Ltd.*, OLRB M.R. Jan. 1966, p. 738).

11. In view of the foregoing, the Board has no alternative but to revoke certification of the applicant found in the Board's decisions of September 29, 1975 and October 17, 1975 and to declare the certificate issued pursuant thereto null and void.

DECISION OF BOARD MEMBER E. BOYER:

1. I dissent.

2. Having regard to all of the evidence I would dismiss the allegations and confirm the certification.

1795-75-R Pharmacists and Professional Employees Union, Local 207,
(Applicant) v. **Armour Associates Ltd.**, (Respondent).

BEFORE: Kevin M. Burkett, Vice-Chairman, and Board Members E. Boyer and J.E.C. Robinson, Q.C.

APPEARANCES: *Rick Sjoerds and Irving Sax for the applicant; no one appeared for the respondent.*

DECISION OF THE BOARD: March 29, 1976

1. This is an application for certification.

2. The applicant was advised by a letter from the registrar dated March 9, 1976 that it must be prepared to satisfy the Board that its organization is a trade union within the meaning of section 1(1) (n) of the Act.

3. Mr. Irving Sax, the president of the Pharmacists and Professional Employees Union, Local 207 was called upon to give evidence in support of the applicant's claim that it is a trade union within the meaning of the Act. He testified that he is a pharmacist employed

by the G. Tamblyn Company and that in an effort to improve the wages and working conditions of pharmacists he contacted a number of other pharmacists and called a meeting at his residence on February 23, 1975. A representative of the Retail Clerks International Association was invited to that meeting and a decision was taken to seek a charter and become an affiliated local of that organization. The minutes of that meeting were filed as exhibit #1. The applicant organization received a letter from the Canadian director of the Retail Clerks International Association on June 17, 1975 acknowledging its willingness to accept the applicant as a chartered local and a charter meeting was called on June 30, 1975. Subsequent to that meeting by-laws were drawn up and were presented to those present at a meeting which took place on Monday, July 28, 1975. The by-laws were accepted, a pro tem executive was elected and it was decided to commence organizing. The minutes of that meeting were filed as exhibit #2. The Constitution of the Retail Clerks International Association and the By-laws of the Pharmacists and Professional Employees Union Local No. 207 were filed as exhibits #3 and #4.

4. Section 1(1)(n) of the Act states:

““trade union” means *an organization of employees* formed for purposes that include the regulation of relations between employees and employers and includes a provincial, national or international trade union and a certified council of trade unions.” (emphasis added).

5. In determining if an organization is a trade union the Board must ask itself, “Is the applicant a trade union as defined by the Act?” (See *C.S.A.O. National (Inc.) and Oakville Trafalgar etc.* (1972) O.R. Vol. 2, 498). In answering this question the Board must first be assured that the applicant is an organization of employees. The Act is designed to maintain the integrity of collective bargaining as an exercise carried on by employees on the one side and by employers on the other, and to minimize wherever possible the potential for conflict of interest having regard to the fact that the exercise requires the maintenance of an arm’s length relationship. Having regard to both the statutory definition and the overall scheme of the Act, an organization seeking status as a trade union must, as a necessary first step, establish that it is an organization of employees.

6. Although there is no definition of the term “employee” in the Act, the Act does stipulate that persons who in the opinion of the Board exercise managerial authority are deemed *not* to be employees for purposes of the Act. Section 1(3)(b) reads:

“1. (3) Subject to section 80, for the purposes of this Act, no person shall be deemed to be an employee,

(b) who, in the opinion of the Board, exercises managerial functions or is employed in a confidential capacity in matters relating to labour relations.”

7. In the instant case the Board is faced with the finding of another panel of the Board that the president of the applicant organization and a number of its members who are employed as pharmacy managers and assistant pharmacy managers with the G. Tamblyn Company exercise managerial authority and therefore are not employees for purposes of the Act. This finding of the Board was made in a decision dated December 18, 1975.

Board File No. 0660-75-R, (unreported) in which the Board dismissed an application for certification which had been filed by the Retail Clerks International Association on behalf of all of the pharmacists in the employ of the G. Tamblyn company in the municipality of Metropolitan Toronto. The Board emphasizes that it is faced not with a possibility that non-employees may be admitted to membership, or with a mistaken belief by certain managerial persons that they are employees for the purposes of the Act, (see *Chrysler Canada Ltd.* case (1975) OLRB Rep. Nov. 852), but with a recent Board finding that the president of the applicant organization and a number of its members exercise managerial functions and are, therefore, non-employees. The applicant has not taken any steps to rectify this anomaly and as a result this situation is clearly distinguishable from that which existed in the *York University* case, Board File No. 1394-75-R, dated January 26, 1976.

8. The Board has read the By-laws of the Pharmacists and Professional Employees Union, Local No. 207 and has noted that the Board finding of December 18, 1975 does not preclude from membership the persons who were found to exercise managerial function. The requirement for membership eligibility as set out in Article II Section A stipulates:

“All persons engaged in work within the trade and geographical jurisdiction of this Local Union shall be eligible for membership subject to the provisions of these bylaws and the Constitution and laws of the International Association.”

The trade jurisdiction is set out in Article I Section D:

“The trade jurisdiction of Local Union No. 207 shall encompass, but shall not be limited to pharmacists interns, undergraduate pharmacists, persons employed in health care and related services, other professional personnel, *managerial or supervisory personnel*, professional salesmen related to work within the jurisdiction of this Local Union or its chartered bodies, or any other jurisdiction as may be determined in any way or manner from time to time by the Retail Clerks International Association.” (Emphasis added). The By-laws, therefore, envisage the taking into membership of “managerial or supervisory personnel” and in fact the applicant organization presently has a number of such persons as members of its organization.

9. The Board must find, therefore, that the applicant organization is not “an organization of employees” but is an organization of both employees and persons exercising managerial functions. (See *Hydro Electric Power Commission of Ontario* case (1971) OLRB Rep. Aug. 501) and having regard to the overall scheme of the Act and to the definition of trade union as found in the Act, the Board declares that the applicant is not a “trade union” within the meaning of the Act.

10. Accordingly, the application is dismissed.

1726-75-R Kingston Typographical Union, No. 204, (Applicant) v. **The Intelligencer**, Published by Canadian Newspapers Company Limited, (Respondent) v. Group of Employees, (Objectors).

BEFORE: Kevin M. Burkett, Vice-Chairman and Board Members J.D. Bell and A. Gribben.

APPEARANCES: *James P. Duffy, Robert Earles, Clifford Ballantyne, William Marcenko and Michael Bradshaw for the applicant; R.J. Drmaj, William Ryrie and H.M. Morton for the respondent; Robin N. Chase for the objectors.*

DECISION OF KEVIN M. BURKETT AND A. GRIBBEN: March 25, 1976

4. The parties were in disagreement as to the inclusion of the editorial columnist within the bargaining unit. The applicant took the position that he should be excluded from the unit because he exercises managerial authority, whereas the respondent argued that he properly belonged within the bargaining unit. The Board therefore, appoints Mr. M.F. Neave, Labour Relations Officer, to inquire into the duties and responsibilities of the editorial columnist and to report to the Board. The parties were in agreement, exclusive of the editorial columnist, that all employees of the respondent at 45 Bridge Street East in the City of Belleville, Ontario and its district bureaux at Picton and Trenton, Ontario, employed in the editorial department and more specifically in the editorial, news, sports, social, photographic and proof reading departments save and except the publisher-general manager, secretary to the publisher-general manager, managing editor, editor, city editor, those regularly employed for not more than twenty-four (24) hours per week and students employed during the school vacation period, constitute a unit of employees of the respondent appropriate for collective bargaining.

5. The Board was in receipt of a number of signed statements in opposition to the application of the trade union. Although only one of the signatures appearing on the statements of desire coincided with the membership evidence submitted by the applicant, it could, if proved voluntary and depending on the ultimate determination with respect to the inclusion or exclusion of the editorial columnist within the bargaining unit, affect the union's right to outright certification. If the editorial columnist is determined to come within the bargaining unit *and* if the statements of desire are proved to be a voluntary expression, then the effect would be to reduce the membership position of the applicant to less than fifty-five per cent thereby requiring the Board to direct that a representation vote be taken pursuant to section 7(2) of the Act. In view of the legislative intent of Section 6(1a) of the Act to circumvent delay in the certification procedure occasioned by bargaining unit disputes, the Board decided to make its normal inquiries as to the origination, preparation and circulation of the petition without awaiting a determination of the bargaining unit dispute. (See *Trench Electric Co. Ltd.* case dated March 5, 1976, Board file # 1671-75-R, so far unreported).

6. Mr. R. Chase appeared before the Board as an objecting employee. He did not witness any of the signatures appearing on any of the statements other than his own, which appeared, along with those of two other employees, on a document dated February 26, 1976. He was prepared to give evidence with respect to circumstances surrounding his

Board File No. 0660-75-R, (unreported) in which the Board dismissed an application for certification which had been filed by the Retail Clerks International Association on behalf of all of the pharmacists in the employ of the G. Tamblyn company in the municipality of Metropolitan Toronto. The Board emphasizes that it is faced not with a possibility that non-employees may be admitted to membership, or with a mistaken belief by certain managerial persons that they are employees for the purposes of the Act, (see *Chrysler Canada Ltd.* case (1975) OLRB Rep. Nov. 852), but with a recent Board finding that the president of the applicant organization and a number of its members exercise managerial functions and are, therefore, non-employees. The applicant has not taken any steps to rectify this anomaly and as a result this situation is clearly distinguishable from that which existed in the *York University* case, Board File No. 1394-75-R, dated January 26, 1976.

8. The Board has read the By-laws of the Pharmacists and Professional Employees Union, Local No. 207 and has noted that the Board finding of December 18, 1975 does not preclude from membership the persons who were found to exercise managerial function. The requirement for membership eligibility as set out in Article II Section A stipulates:

“All persons engaged in work within the trade and geographical jurisdiction of this Local Union shall be eligible for membership subject to the provisions of these bylaws and the Constitution and laws of the International Association.”

The trade jurisdiction is set out in Article I Section D:

“The trade jurisdiction of Local Union No. 207 shall encompass, but shall not be limited to pharmacists interns, undergraduate pharmacists, persons employed in health care and related services, other professional personnel, *managerial or supervisory personnel*, professional salesmen related to work within the jurisdiction of this Local Union or its chartered bodies, or any other jurisdiction as may be determined in any way or manner from time to time by the Retail Clerks International Association.” (Emphasis added). The By-laws, therefore, envisage the taking into membership of “managerial or supervisory personnel” and in fact the applicant organization presently has a number of such persons as members of its organization.

9. The Board must find, therefore, that the applicant organization is not “an organization of employees” but is an organization of both employees and persons exercising managerial functions. (See *Hydro Electric Power Commission of Ontario* case (1971) OLRB Rep. Aug. 501) and having regard to the overall scheme of the Act and to the definition of trade union as found in the Act, the Board declares that the applicant is not a “trade union” within the meaning of the Act.

10. Accordingly, the application is dismissed.

1726-75-R Kingston Typographical Union, No. 204, (Applicant) v. **The Intelligencer**, Published by Canadian Newspapers Company Limited, (Respondent) v. Group of Employees, (Objectors).

BEFORE: Kevin M. Burkett, Vice-Chairman and Board Members J.D. Bell and A. Gribben.

APPEARANCES: *James P. Duffy, Robert Earles, Clifford Ballantyne, William Marcenko and Michael Bradshaw for the applicant; R.J. Drmaj, William Ryrie and H.M. Morton for the respondent; Robin N. Chase for the objectors.*

DECISION OF KEVIN M. BURKETT AND A. GRIBBEN: March 25, 1976

4. The parties were in disagreement as to the inclusion of the editorial columnist within the bargaining unit. The applicant took the position that he should be excluded from the unit because he exercises managerial authority, whereas the respondent argued that he properly belonged within the bargaining unit. The Board therefore, appoints Mr. M.F. Neave, Labour Relations Officer, to inquire into the duties and responsibilities of the editorial columnist and to report to the Board. The parties were in agreement, exclusive of the editorial columnist, that all employees of the respondent at 45 Bridge Street East in the City of Belleville, Ontario and its district bureaux at Picton and Trenton, Ontario, employed in the editorial department and more specifically in the editorial, news, sports, social, photographic and proof reading departments save and except the publisher-general manager, secretary to the publisher-general manager, managing editor, editor, city editor, those regularly employed for not more than twenty-four (24) hours per week and students employed during the school vacation period, constitute a unit of employees of the respondent appropriate for collective bargaining.

5. The Board was in receipt of a number of signed statements in opposition to the application of the trade union. Although only one of the signatures appearing on the statements of desire coincided with the membership evidence submitted by the applicant, it could, if proved voluntary and depending on the ultimate determination with respect to the inclusion or exclusion of the editorial columnist within the bargaining unit, affect the union's right to outright certification. If the editorial columnist is determined to come within the bargaining unit *and* if the statements of desire are proved to be a voluntary expression, then the effect would be to reduce the membership position of the applicant to less than fifty-five per cent thereby requiring the Board to direct that a representation vote be taken pursuant to section 7(2) of the Act. In view of the legislative intent of Section 6(1a) of the Act to circumvent delay in the certification procedure occasioned by bargaining unit disputes, the Board decided to make its normal inquiries as to the origination, preparation and circulation of the petition without awaiting a determination of the bargaining unit dispute. (See *Trench Electric Co. Ltd.* case dated March 5, 1976, Board file # 1671-75-R, so far unreported).

6. Mr. R. Chase appeared before the Board as an objecting employee. He did not witness any of the signatures appearing on any of the statements other than his own, which appeared, along with those of two other employees, on a document dated February 26, 1976. He was prepared to give evidence with respect to circumstances surrounding his

“change of heart” and in view of the fact that he was the one employee who had signed both a membership card and a statement in opposition, the Board heard his evidence. He testified that he reviewed in his own mind the desirability of having a union and decided against the union. In addition he was not happy with the way his signature had been obtained in that he had only discussed the matter for a few minutes with the union representative. He also testified that on the Friday or Monday before the notice of the application was posted (February 26, 1976) he had been called into the office of Mr. M. Switzer, the managing editor, who was conducting individual interviews with all the employees in the bargaining unit. He testified that he was told by Mr. M. Switzer that he knew who was organizing the union and he further testified that he knew from the tone of the conversation that Mr. Switzer was “disturbed” by the application for certification. All employees were subsequently directed to read the notice of the application and Mr. Chase testified that when he had the opportunity to “rescind” his signature from the membership evidence he signed the statement in opposition to the trade union.

7. The Board stated in the *New Ontario Dynamics Limited* case, Board File No. 0890-75-R, November 26, 1975 with reference to management personnel holding meetings with employees prior to the origination of a statement of desire in opposition to a trade union:

“We also note that the holding of a meeting prior to the origination of an opposition petition has traditionally been viewed with suspicion by the Board. It is for those in support of the document to satisfy the Board that it represents a voluntary expression of wishes and the Board has often dismissed petitions originating after a meeting of this kind. (See *Bulk-Lift Systems Limited* (1961) OLRB Mthly. Rep. March 431; *Canadian Mouldings Ltd.* (1967) OLRB Mthly. Rep. Nov. 743; *General Markets Limited* 62 CLLC 16, 245; *Travelaine Trailer Manufacturing Ltd.* (1970) OLRB Mthly. Rep. Nov. 829; *Parnell Vending Limited* (1965) OLRB Mthly. Rep. Apr. 5; *Hayes Steel Products* (1964) OLRB Mthly Rep. Apr. 30.) Because of the delicate nature of the employer/employee relationship described in *Pigott Motors* (1961) Limited, 63 CLLC 16, 264, such meetings convey the anti-union sentiments of the management regardless of their content and, because of this, tend to taint the following efforts of employees who decide to oppose the application.”

8. The delicate nature of the employer/employee relationship was described in the *Pigott Motors* case (supra) in the following terms:

“In view of the responsive nature of his relationship with his employer and of his natural desire to want to appear to identify himself with the interests and wishes of his employer, an employee is obviously peculiarly vulnerable to influences, obvious or devious, which may operate or impair or destroy the free exercise of his rights under the Act. *It is precisely for this reason* and because the Board has discovered in a not inconsiderable number of cases that management has improperly inhibited or interfered with the free exercise by employees of their rights under the Act, that the Board has required evidence of a form and of a nature which will provide some reasonable assurance that a document such as a petition signed by employees purporting

to express opposition to the certification of a trade union, truly and accurately reflects the voluntary wishes of the signatories.” (emphasis added)

9. Counsel for the respondent referred the Board to the *Shop-Rite Catalogue Stores* decision Board File No. 5797-74-R dated August 13, 1974, unreported, in support of his argument that the meetings held by the managing editor prior to the signing of the statement in opposition to the union did not necessarily impair the freedom of expression. The *Shop-Rite* decision does not pertain to the voluntariness of a petition but to the exercise of the Board’s discretion under section 7(4) (now section 7a of the Act) to dispense with a representation vote when such a vote would not likely reveal the true wishes of the employees. The *Shop-Rite* decision, therefore, is not helpful in deciding the matter before us in the instant case. A secret ballot vote conducted under the auspices of the Board guarantees that the employee’s choice will not be revealed to the employer and consequently the Board looks to such unlawful activity as coercion, intimidation, threats, promises, undue influence and often to a pattern of such activity in exercising its discretion under section 7a. (See *Paragon Tools* case, 70 CLLC 16, 012; *Morel Contractors* case (1968) OLRB Mthly. Rep. Apr. 43; *Bell and Howell* case (1968) OLRB Mthly. Rep. Oct. 695; *Rothway Concentration* case (1968) OLRB Mthly. Rep. Dec. 918; and *Darrigo Foods* case (1973) OLRB Mthly. Rep. June 372). There is no evidence before the Board in this matter which would support the exercise of Board discretion under section 7a of the Act if the question of a representation vote were before us. The meetings called by Mr. Switzer, however, cast into doubt the voluntariness of the statement of desire in opposition to the union. The secrecy of the employees’ choice as expressed in a statement of desire is not guaranteed and, therefore, having regard to the nature of the employer/employee relationship (as expressed in paragraph 8) the pressures which impair the freedom of choice as expressed in a statement of desire can be more subtle and unobtrusive as compared to those which would cause an employee not to make a voluntary choice on a secret ballot. An employee may sign a statement of desire out of a legitimate fear that his failure to do so would become known to the employer or out of an attempt to ingratiate himself with the employer having been made aware of the employer’s dislike for the union and in such circumstances the choice is not a voluntary one.

10. Having regard to the evidence before us and especially to the meeting called by Mr. Switzer, the managing editor, and to the jurisprudence of the Board in these matters, the Board finds that the statement of Mr. Chase in opposition to the union is not a free expression and therefore it does not affect the membership evidence submitted by the applicant.

11. It was brought to the attention of the union after the hearing that a Form 8 had not been filed. Mr. Duffy who represented the union at the hearing expressed surprise and stated that he himself had made the necessary inquiries and had to the best of his recollection filed the Form 8. He was asked the nature of the inquiries he had undertaken and gave a satisfactory response having regard to paragraph 3 of the Form 8. The Board has the authority under Rule 57(2) to enlarge the time prescribed by section 6 of the Board’s Rules of Procedure to permit the late filing of a Form 8 and has done so on a number of occasions. (See *Sovereign Construction Company Limited* case (1966) OLRB Rep. Sep. 422, *Friedsman Department Store* case (1969) OLRB Rep. Sept. 794, *Dominion Bridge Company Limited* case (1970) OLRB Rep. Apr. 57). The Board’s approach to the question of the late filing of Form 8 has been expressed in the *Canadian General Tower Limited* case (1968) OLRB Rep. Oct. 715 wherein the Board stated:

“Since Form 8 identifies and substantiates the documentary evidence of membership which has been previously filed, this type of evidence is acceptable at the hearing of an application pursuant to the provisions of section 48(2).

The Board’s Rules of Procedure are not designed as obstacles placed in the path of parties to a proceeding, but are intended to permit the Board to administer the Labour Relations Act in a manner whereby one party will not be able to unfairly gain a procedural advantage over the other to the prejudice of the other party. The Board’s primary function in an application for certification is to determine the true wishes of the employees in the bargaining unit in the exercise of their right to choose a bargaining agent. This function is not properly exercised if the Board refuses to make the determination of technical irregularity which in no way creates an unfair advantage prejudicial to the rights of a party or prevents the Board from properly assessing the evidence.”

Having regard to these considerations and to the response of Mr. Duffy with respect to the nature of his inquiries the Board extends the time limit for the filing of the Form 8 in this matter to March 15, 1976, the date of the hearing.

12. The Board is satisfied on the basis of all the evidence before it that the dispute as to the composition of the bargaining unit cannot affect the applicant’s right to certification regardless of the inclusion or exclusion of the editorial columnist. More than fifty-five per cent of the employees of the respondent in the appropriate bargaining unit, at the time the application was made, were members of the applicant on March 3, 1976 the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the Act.

13. The applicant is certified under the provisions of section 6(1a) of the Act as the bargaining agent for all employees of the respondent at 45 Bridge Street East in the City of Belleville, Ontario, and its district bureaux at Picton and Trenton, Ontario employed in the editorial department and more specifically in the editorial, news, sports, social, photographic and proof reading departments save and except the publisher-general manager, secretary to the publisher-general manager, managing editor, editor, city editor, editorial columnist, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period.

14. A formal certificate must await the final bargaining unit determination.

DECISION OF BOARD MEMBER J.D. BELL:

1. Mr. R. Chase appeared before the Board. It was ascertained that he was the one employee who had signed both a membership card and a statement in opposition.

2. He testified under cross-examination that he had discussions with union representatives and with Mr. Switzer after he had signed a membership card. However, he is still opposed to the union and the statement he signed is a free expression of his desire.

3. I, therefore, would find that the statement in opposition does affect the membership evidence and would direct that a representation vote by secret ballot be held.

CASE LISTINGS MARCH 1976

	Page
1. Certification	
(a) Bargaining Agents Certified	19
(b) Applications Dismissed	33
(c) Applications Withdrawn	35
2. Applications for Declaration Terminating Bargaining Rights	36
3. Applications for Declaration that Strike Unlawful	37
4. Applications for Consent to Prosecute	37
5. Complaints under Section 79 (Unfair Labour Practice)	37
6. Applications for Consent to Early Termination of Collective Agreement	39
7. Application for Determination under Section 95(2)	40
8. Reference to Board Pursuant to Section 96	40
9. Applications under Section 112a	40
10. Applications for Reconsideration of Board's Decision	41

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING MARCH 1976

Applications For Certifications

BARGAINING AGENTS CERTIFIED

No Vote Conducted

1142-75-R: International Beverage Dispensers' and Bartenders' Union, Local 280, of the Hotel and Restaurant Employees' and Bartenders' International Union A.F.L.-C.I.O.-C.L.C. (Applicant) v. Seaway Hotels (Ontario) Limited (Respondent).

Unit: "all full time and part time tapmen, bartenders alcoholic beverage waiters, male or female, bar-boys and improvers in the employ of the respondent in Metropolitan Toronto save and except managers and those above the rank of manager." (107 employees in the unit). (*By agreement of the parties*).

1168-75-R: Algoma University College Faculty Association (Applicant) v. Board of Governors of Algoma University College (Respondent).

Unit: "all full-time academic staff including professional librarians employed by the respondent in the City of Sault Ste. Marie, District of Algoma, Province of Ontario, save and except the principal, members of the Board of Governors and business manager." (36 employees in the unit).

1382-75-R: Local #742 of the International Brotherhood of Electrical Workers (Applicant) v. Hydro-Electric Commission of the City of Pembroke (Respondent).

Unit: "all office employees of the respondent employed at the office of the Hydro-Electric Commission of the City of Pembroke save and except Supervisor, those above the rank of Supervisor, Operation Manager, Office Manager, the secretaries to each of the Operation Manager and Office Manager, those employees presently covered by an existing collective agreement between the respondent and the International Brotherhood of Electrical Workers Local #742, persons who are regularly employed for not more than 24 hours per week and students employed during the school vacation periods." (6 employees in the unit).

1455-75-R: Carleton University Support Staff Association (Applicant) v. Carleton University (Respondent) v. Group of Employees (Objectors).

Unit: "all employees engaged by the respondent in the Regional Municipality of Ottawa-Carleton in clerical, technical, administrative and service duties, save and except: (i) all persons presently covered by subsisting collective agreements between the university including the Carleton University Academic Staff Association, the Canadian Union of Public Employees, the Graphic Arts International Union, the International Union of Operating Engineers, and the Canadian Guards Association; (ii) all employees on appointments not paid from University operating or ancillary funds (see Note 1); (iii) all persons regularly employed for not more than 24 hours per week; (iv) all persons registered as an undergraduate or graduate student; (v) all employees in the Offices of the President,

Vice-Presidents, Director of Finance, Controller, Personnel and Secretary to the Board of Governors; (vi) all persons employed in positions involving managerial functions and/or in a confidential capacity in matters relating to labour relations, as set out in Appendix A as attached.'. (780 employees in the unit). (*Having regard to the agreement of the parties*). (NOTE 1 For purposes of clarity "all persons on appointments not paid from University operating and ancillary funds" includes grant appointees, persons employed by student associations, faculty club staff, and persons employed by other third parties who provide contract services for the University. NOTE 2 For purposes of clarity, the parties have agreed that all persons employed on a temporary basis and who work in excess of 24 hours per week for not more than three consecutive months will be excluded from the bargaining unit.).

1463-75-R: Canadian Union of Public Employees (Applicant) v. Noel Ambulance Service Limited (Respondent).

Unit: "all employees of the respondent employed in Hawkesbury, Ontario save and except owner/operators and persons above that rank, office staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (26 employees in the unit). (*Having regard to the foregoing*).

1539-75-R: Mississauga Public Library Staff Association (Applicant) v. City of Mississauga Public Library Board (Respondent).

Unit: "All employees of the respondent in the City of Mississauga save and except department/-branch heads, persons above the rank of department/branch head, students employed during the school vacation period and persons regularly employed for not more than 24 hours per week." (137 employees in the unit).(*Having regard to the agreement of the parties*).

1560-75-R: Canadian Union of Public Employees (Applicant) v. Big Brothers Association of Ottawa & District (Respondent).

Unit: "all employees of the respondent, save and except the executive director and persons above the rank of executive director." (5 employees in the unit). (*Having regard to the agreement of the parties*).

1587-75-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Murphy Tobacco Limited (Respondent) v. Employee (Objector).

Unit: "all office and clerical employees of the respondent at Windsor, save and except office managers and persons above the rank of office manager and persons regularly employed for not more than 24 hours per week." (3 employees in the unit). (*Having regard to the agreement of the parties*).

1634-75-R: Canadian Union of Public Employees (Applicant) v. Beaver Foods Ltd. (Respondent).

Unit: "all employees of the respondent in its Nutricare Division at Memorial Hospital, Bowmanville who are regularly employed for not more than 24 hours per week and students who are employed during the school vacation period save and except graduate dietitians, student dietitians, supervisors and persons above the rank of supervisor, office staff and those covered by the existing collective agreement." (15 employees in the unit). (*Having regard to the agreement of the parties*).

1653-75-R: Service Employees Union, Local 204, affiliated with the A.F. of L., C.I.O., C.L.C. (Applicant) v. VS Service Ltd. (Respondent).

Unit: “all employees of VS Services Ltd. (Food Management Services) at its unit located at Grace Hospital in Metropolitan Toronto, save and except supervisors, those above the rank of supervisor, dietitians, student dietitians and office staff.” (32 employees in the unit). (*Having Regard to the agreement of the Parties*). (For purposes of clarity the Board noted that the classification, assistant manager, is above that of supervisor). (For purposes of clarity the Board also notes that the classification, student dietitian, includes only those who are engaged in an accredited program leading to qualification as a dietician).

1660-75-R: Canadian Union of Public Employees (Applicant) v. The Durham Board of Education (Respondent) v. Employee (Objector).

Unit: “all office and clerical employees of the respondent in the Region of Durham who are regularly employed for not more than 24 hours per week.” (41 employees in the unit). (*Having regard to the agreement of the parties*).

1666-75-R: United Steelworkers of America (Applicant) v. Canadian Mine Enterprises Ltd. (Respondent).

Unit: “all employees of the respondent at Lake Agnew Mines in the Township of Hyman in the District of Sudbury, save and except foremen, persons above the rank of foreman, office and technical staff.” (24 employees in the unit). (*Having regard to the agreement of the parties*). (For the purposes of clarity, the Board noted the further agreement of the parties to the effect that persons classified by the respondent as “Shift Bosses” are excluded from the said bargaining unit.).

1671-75-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. Trench Electric Limited (Respondent) v. Group of Employees (Objectors).

Unit: “all employees of the respondent company in Markham save and except foremen and those above the rank of foreman engineering, office and sales staff.” (28 employees in the unit).

1674-75-R: Laundry Dry Cleaning & Dye House Workers International Union, Local 341 (Applicant) v. Canadian Linen Supply (Ontario) Limited (Respondent).

Unit: “all employees of the respondent at its plant at Stoney Creek, save and except supervisors, persons above the rank of supervisor, office and sales staff, drivers, students employed during the school vacation, and persons regularly employed for not more than 24 hours per week.” (716 employees in the unit). (*Having regard to the agreement of the parties*).

1677-75-R: Canadian Union of Public Employees (Applicant) v. Toronto Western Hospital (Respondent) v. Ontario Nurses’ Association (Intervener).

Unit: “all employees of the respondent at its detoxification centre located at 16 Ossington Avenue, Toronto, Ontario save and except supervisor and persons above the rank of supervisor and employees regularly employed for not more than 24 hours per week.” (10 employees in the unit). (*Having regard to the agreement of the parties*).

1689-75-R: Hotel and Restaurant Employees and Bartenders International Union Restaurant, Cafeteria and Tavern Employees Union, Local 254 (Applicant) v. Walfoods Limited (Respondent).

Unit: “all employees of the respondent at the Department of Transportation and Communications, Highway 401 and Keele Street, and at 3625 Dufferin Street, Downsview, save and except assistant manager, persons above the rank of assistant manager, head chef, office staff and students employed

during the school vacation period.” (19 employees in the unit). (*Having regard to the agreement of the parties*).

1695-75-R: International Molders & Allied Workers Union (Applicant) v. Union Electric Supply Co. Limited (Respondent).

Unit #1: “all employees of the respondent situate at 1491 Castlefield Avenue, Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period.” (57 employees in the unit). (*Having regard to the agreement of the parties*).

Unit #2: “all employees of the respondent situate at 1770 Midland Avenue, Scarborough, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period.” (7 employees in the unit). (*Having regard to the agreement of the parties*).

1700-75-R: International Union of Operating Engineers, Local 793 (Applicant) v. Agnew-Baillie Contracting Limited (Respondent).

Unit: “all employees of the respondent in the County of Wentworth including part of Township of North Dumfries annexed from Beverly Township and the Township of Nassageweya and the Town of Burlington in the County of Halton engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman.” (11 employees in the unit).

1702-75-R: The United Brotherhood of Carpenters and Joiners of America (Applicant) v. Szatamri I. (General Construction) Limited (Respondent).

Unit: “all carpenters and carpenters’ apprentices in the employ of the respondent in the Counties of Oxford, Perth, Huron, Middlesex, Bruce and Elgin, save and except non-working foremen and persons above the rank of non-working foreman.” (4 employees in the unit).

1720-75-R: International Association of Machinists and Aerospace Workers, Thunder Bay Lodge 1120 (Applicant) v. Detco Steelfab Inc. (Respondent).

Unit: “all employees of the respondent at Thunder Bay, save and except foremen, persons above the rank of foreman, office staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period.” (7 employees in the unit). (*Having regard to the agreement of the parties*).

1726-75-R: Kingston Typographical Union, No. 204 (Applicant) v. The Intelligencer, Published by Canadian Newspapers Company Limited (Respondent) v. Group of Employees (Objectors).

Unit: “all employees of the respondent at 45 Bridge Street East in the City of Belleville, Ontario, and its district bureaux at Picton and Trenton, Ontario employed in the editorial department and more specifically in the editorial, news, sports, social, photographic and proof reading departments save and except the publisher-general manager, secretary to the publisher-general manager, managing editor, editor, city editor, editorial columnist, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period.” (17 employees in the unit).

1727-75-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. Brian Tourangeau Limited (Respondent).

Unit: “all carpenters and carpenters’ apprentices in the employ of the respondent in the Regional Municipality of Ottawa – Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman.” (4 employees in the unit).

1730-75-R: Canadian Union of Public Employees (Applicant) v. Corporation of the County of Middlesex (Respondent).

Unit: “all employees of the respondent in its Roads Department, save and except foremen, persons above the rank of foreman, office and clerical staff and students employed during the school vacation period.” (42 employees in the unit).

1731-75-R: Kingston Typographical Union, No. 204 (Applicant) v. The Intelligencer, Published by Canadian Newspapers Company Limited (Respondent).

Unit: “all employees of the respondent at 45 Bridge Street East in the City of Belleville, Ontario, Employed in the composing room save and except foremen and assistant foremen, persons of equal and higher ranks and persons regularly employed for not more than twenty-four hours per week.” (24 employees in the unit).

1737-75-R: International Molders & Allied Workers Union (Applicant) v. Goodwill Electric Supplies Limited (Respondent).

Unit: “all employees of the respondent at Simcoe, save and except foremen, persons above the rank of foreman and office and sales staff.” (3 employees in the unit).

1738-75-R: International Molders & Allied Workers Union (Applicant) v. Goodwill Electric Supplies Limited (Respondent).

Unit: “all employees at Guelph, save and except foremen, persons above the rank of foreman and office and sales staff.” (3 employees in the unit).

1739-75-R: International Molders & Allied Workers Union (Applicant) v. Goodwill Electric Supplies Limited (Respondent).

Unit: “all employees of the respondent at Brantford, save and except foremen, persons above the rank of foreman and office and sales staff.” (5 employees in the unit).

1741-75-R: International Molders & Allied Workers Union (Applicant) v. Goodwill Electric Supplies Limited (Respondent).

Unit: “all employees of the respondent at Niagara Falls, save and except foremen, persons above the rank of foreman and office and sales staff.” (4 employees in the unit).

1742-75-R: International Molders & Allied Workers Union (Applicant) v. Union Electric Supply Co. Limited (Respondent).

Unit: “all employees of the respondent at Kitchener, save and except foremen, persons above the rank of foreman and office and sales staff.” (5 employees in the unit).

1745-75-R: Christian Labour Association of Canada (Applicant) v. Shar-Dee Contracting Ltd. (Respondent).

Unit: "all construction labourers, ironworkers, ironworkers' apprentices, cement finishers and all employees of the respondent in the Regional Municipality of Niagara and the County of Haldimand, engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit). (*Having regard to the foregoing*).

1746-75-R: United Brotherhood of Carpenters and Joiners of America, Local 1190 (Applicant) v. Praetor Enterprises Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the County of Wellington, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).

1747-75-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. National Grocers Company Limited (Respondent).

Unit: "all employees of the respondent at its Steeltor Red & White Store in Sault Ste. Marie save and except Assistant Manager, persons above the rank of Assistant Manager, persons regularly employed for not more than 24 hours per week, students employed during the school vacation periods and employees covered by a subsisting collective agreement between Local 582 of the Applicant and the Respondent at Sault Ste. Marie, Ontario." (17 employees in the unit). (*Having regard to the agreement of the parties*).

1748-75-R: Service Employees Union, Local 210, affiliated with Service Employees International Union, AFL-CIO-CLC (Applicant) v. The Sisters of St. Joseph of the Diocese of London in Ontario Owners and Operators of St. Joseph's Hospital, Chatham, Ontario (Respondent) v. Civil Service Association of Ontario Inc. (Intervener) v. Group of Employees (Objectors).

Unit: "all lay office and clerical employees of the respondent employed in its hospital at Chatham, Ontario, save and except Supervisors, persons above the rank of Supervisor, confidential secretaries to the Administrator, Assistant Administrator, and Personnel Director, persons regularly employed for not more than twenty-four (24) hours per week, students employed during the school vacation period and persons covered by subsisting collective agreements." (48 employees in the unit). (*Having regard to the agreement of the parties*).

1749-75-R: United Steelworkers of America (Applicant) v. Canadian Mine Enterprises Ltd. (Respondent).

Unit: "all employees of the respondent at Denison Mine in the Township of Elliott Lake in the District of Algoma, save and except foremen and shift bosses, persons above the rank of foremen and shift boss, office, clerical and technical staff." (27 employees in the unit). (*Having regard to the agreement of the parties*).

1754-75-R: United Brotherhood of Carpenters & Joiners of America, Local 38 (Applicant) v. Active Tile and Carpet Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Regional Municipality of Niagara and the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

1760-75-R: The Hotel and Club Employees' Union, Local 299, Toronto, of the Hotel and Restaurant Employees' and Bartenders' International Union, AFL-CIO-CLC (Applicant) v. Southside Development Limited (Four Seasons Sheraton) (Respondent).

Unit: "all garage attendants employed by the respondent in the City of Toronto, Municipality of Metropolitan Toronto, save and except supervisors and persons above the rank of supervisor." (9 employees in the unit). (*Having regard to the agreement of the parties*).

1761-75-R: Retail Clerks Union, Local 486 (Applicant) v. Cardinal Distributors Limited (Respondent).

Unit #1: "all employees of the respondent at Ottawa, Ontario, save and except manager, persons above the rank of manager, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (4 employees in the unit). (*Certified*).

Unit #2: "all employees of the respondent regularly employed for not more than 24 hours per week and students employed during the school vacation period." (13 employees in the unit). (*Dismissed*).

1763-75-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1190 (Applicant) v. Della Penna Carpenters Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

1774-75-R: United Steelworkers of America (Applicant) v. Veres Wire Industry Ltd. (Respondent).

Unit: "all employees of the respondent company in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (56 employees in the unit).

1787-75-R: Local Union 105 International Brotherhood of Electrical Workers (Applicant) v. James Electric (Respondent).

Unit: "all electricians and electricians' apprentices in the employ of the respondent in the County of Wentworth including part of Township of North Dumfries annexed from Beverly Township and the Township of Nassagaweya and the Town of Burlington in the County of Halton, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

1794-75-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1190 (Applicant) v. G. Brusadin Construction (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

1800-75-R: Service Employees Union, Local 204, Affiliated with the A.F. of L., C.I.O., C.L.C. (Applicant) v. Mount Sinai Hospital (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, regularly employed for not more than twenty-four (24) hours per week save and except professional medical staff, graduate nurses, undergraduate nurses, graduate pharmacists, graduate dieticians, student dieticians, social workers, technical personnel, foremen, persons above the rank of foreman, office staff, students employed in a co-operative training program and persons covered by subsisting collective agreements." (29 employees in the unit). (Clarity Note: Student dieticians include only those persons doing practical training during any part of the year while enrolled in a full-time educational program.).

1811-75-R: International Association of Bridge, Structural and Ornamental Ironworkers, Local Union 721 (Applicant) v. Alumex Co. (Respondent).

Unit: "all ironworkers and ironworkers' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (28 employees in the unit).

1816-75-R: The Carpenters' District Council of Toronto and Vicinity on behalf of Locals 27, 666, 681, 1133, 1963, 3227 and 3233, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Atco Company. (Construction Division) (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

1817-75-R: Labourers' International Union of North America, Local 506 (Applicant) v. Solray Investments Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, employed on building projects, except residential building projects, but including labourers employed as helpers of bricklayers and plasterers, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

1819-75-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (U.A.W.) (Applicant) v. Windsor Match Plate & Tool Limited. (Respondent).

Unit: "all employees of the respondent at Windsor, Ontario, save and except foremen, those above the rank of foreman, office and sales staff." (36 employees in the unit). (*Having regard to the agreement of the parties*).

1830-75-R: Service Employees Union, Local 210 affiliated with Service Employees International Union, AFL-CIO-CLC (Applicant) v. Christian Care Centres of Leamington Operating Leamington Lodge (Respondent).

Unit: "all employees of the Leamington at 24 Russell St., Leamington, Ontario save and except professional nursing staff, physiotherapists, occupational therapists, supervisors, foreman, activities director, those above the rank of supervisor or foreman and office staff, and persons regularly employed for not more than 24 hours per week, students employed during school vacation period." (9 employees in the unit). (*Having regard to the agreement of the parties*).

1839-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. A. E. LePage (Ontario) Ltd. (Respondent).

Unit: "all employees of the Respondent engaged in cleaning and maintenance at the Clarion Tower, 20 Redgrave Drive, at Etobicoke, including resident superintendents, save and except property managers, persons above the rank of property manager, office and clerical staff." (2 employees in the unit). (*Having regard to the agreement of the parties*).

1840-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. A. E. LePage (Ontario) Ltd. (Respondent).

Unit: "all employees of the Respondent engaged in cleaning and maintenance at the Martinway Tower, 695 Martingrove Road, at Etobicoke, including resident superintendents, save and except property managers, persons above the rank of property manager, office and clerical staff." (2 employees in the unit). (*Having regard to the agreement of the parties*).

1849-75-R: Carpenters' District Council of Toronto and Vicinity on behalf of Locals 27, 666, 681, 1133, 1963, 3227, and 3233, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Nick Jiacalone Woodworking Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

1851-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. The Charles Nolan Company Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, employed on residential construction, save and except construction labourers employed as helpers of bricklayers and plasterers, non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

1862-75-R: Christian Trade Unions of Canada (Local 6) (Applicant) v. Brenzil Construction Co. Ltd. (Respondent).

Unit: "all carpenters, carpenters' apprentices, construction labourers and all employees of the respondent in the Counties of Brant and Norfolk engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of nonworking foreman." (3 employees in the unit). (*Having regard to the foregoing*).

1868-75-R: Christian Labour Association of Canada (Applicant) v. Hexamer Electric Limited (Respondent).

Unit: "all electricians and electricians' apprentices in the employ of the respondent in the Regional Municipality of Niagara and the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit). (*Having regard to the foregoing*).

Applications Certified Subsequent to Pre-Hearing Vote

1471-75-R: Canadian Chemical Workers Union (Applicant) v. Union Gas Limited (Respondent) v. Local 683, International Chemical Workers' Union (Intervener).

Unit: "all regular employees, construction labour pool employees and temporary employees employed by Union Gas Limited at and out of the company's branches at Guelph, Hanover, Owen Sound, Stratford, Goderich and Waterloo save and except non-working assistant foreman, those above the rank of non-working assistant foreman, sales and office staff and persons covered by any subsisting collective agreements." (68 employees in the unit). (*Having regard to the agreement of the parties*).

Number of persons on voters' list		66
Number of persons who cast ballots	57	
Number of spoiled ballots	2	
Number of ballots marked in favour of applicant	43	
Number of ballots marked in favour of intervener	12	

1472-75-R: Canadian Chemical Workers Union (Applicant) v. Union Gas Limited (Respondent) v. Local 426, International Chemical Workers' Union (Intervener).

Unit: "all regular employees, construction labour pool employees and temporary employees employed by Union Gas Limited at and out of the company's branch at St. Thomas, save and except non-working assistant foremen, those above the rank of non-working assistant foreman, sales and office staff." (15 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on revised voters list		17
Number of persons who cast ballots	16	
Number of spoiled ballots	0	
Number of ballots marked in favour of applicant	15	
Number of ballots marked in favour of intervener	1	

1473-75-R: Canadian Chemical Workers Union (Applicant) v. Union Gas Limited (Respondent) v. Local 725, International Chemical Workers' Union (Intervener).

Unit: "all regular employees, construction labour pool employees and temporary employees employed by Union Gas Limited at and out of the company's branches at Simcoe and Tillsonburg, save and except non-working assistant foremen, those above the rank of non-working assistant foreman, sales and office staff." (52 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on revised voters list		53
Number of persons who cast ballots	50	
Number of spoiled ballots	0	
Number of ballots marked in favour of applicant	49	
Number of ballots marked in favour of intervener	1	

1474-75-R: Canadian Chemical Workers Union (Applicant) v. Union Gas Limited (Respondent) v. Local 798, International Chemical Workers' Union (Intervener).

Unit: "all regular office and clerical employees of Union Gas Limited at the company's branches at Simcoe, Tillsonburg, and Haldimand, save and except supervisory employees, those employees above the rank of supervisor, Branch Customer Accounting, Sales Representatives, Technicians and employees working 24 hours per week or less." (12 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on voters' list		13
Number of persons who cast ballots	12	
Number of spoiled ballots	0	
Number of ballots marked in favour of applicant	12	
Number of ballots marked in favour of intervener	0	

1475-75-R: Canadian Chemical Workers Union (Applicant) v. Union Gas Limited (Respondent) v. Local 684, International Chemical Workers' Union (Intervener).

Unit: "all regular employees, construction labour pool employees and temporary employees employed by Union Gas Limited at and out of its company's branches at Cambridge, Woodstock and Brantford, save and except non-working assistant foremen, those above the rank of non-working assistant foreman, sales and office staff." (72 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on revised voters list		73
Number of persons who cast ballots	65	
Number of spoiled ballots	2	
Number of ballots marked in favour of applicant	60	
Number of ballots marked in favour of intervener	3	

1476-75-R: Canadian Chemical Workers Union (Applicant) v. Union Gas Limited (Respondent) v. Local 798, International Chemical Workers' Union (Intervener).

Unit: "all regular office and clerical employees of Union Gas Limited at 10 Surrey Street, Guelph, save and except supervisors, persons above the rank of supervisor, one clerk or secretary employed in a confidential capacity, Technicians, Sales Representatives, Regional Consumer Service Representatives and employees working 24 hours per week or less." (9 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on voters' list		9
Number of persons who cast ballots	6	
Number of ballots marked in favour of applicant	6	
Number of ballots marked in favour of intervener	0	

1477-75-R: Canadian Chemical Workers Union (Applicant) v. Union Gas Limited (Respondent) v. Local 798, International Chemical Workers' Union (Intervener).

Unit: "all regular office and clerical employees of Union Gas Limited at its Chatham Division and all regular office and clerical employees of the Company's Chatham Meter Shop, save and except all other employees of the Company's head office, supervisory employees, those employees above the rank of Supervisor, Regional Consumer Service Representatives, Consumer Service Advisors, Sales Representatives, Technicians, three Secretaries or Stenographers employed in a confidential capacity to the Regional Manager, the Operations Manager, the Division Sales Manager, the Manager, Special Projects, and employees working 24 hours per week or less." (49 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on voters list		48
Number of persons who cast ballots	47	
Number of ballots marked in favour of applicant	47	
Number of ballots marked in favour of intervener	0	

1514-75-R: Oil, Chemical and Atomic Workers International Union (Applicant) v. Union Gas Limited (Respondent) v. Locals 426 & 798, International Chemical Workers' Union (Intervener).

Unit: "all regular office, clerical and temporary employees of the Respondent at London and St. Thomas, Ontario, save and except supervisory employees, persons above the rank of Supervisor, Regional Consumer Services Representatives, Consumer Services Advisors, Sales Representatives, Technicians, five secretaries employed in a confidential capacity to the Manager, Central Region, the Operations Manager, the Sales Manager, the Manager, Plant Services, the Manager, Appliance Services, the Manager Customer Information, the Personnel Supervisor, and persons regularly employed for not more than 24 hours per week." (70 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on voters' list		70
Number of persons who cast ballots		67
Ballots segregated and not counted	2	
Number of ballots marked in favour of applicant	58	
Number of ballots marked in favour of intervener	7	

1515-75-R: Oil, Chemical and Atomic Workers International Union (Applicant) v. Union Gas Limited (Respondent) v. Local 798, International Chemical Workers' Union (Intervener).

Unit: "all regular employees, construction labour pool employees and temporary employees employed by the Respondent at and out of London and Strathroy, Ontario, save and except non-working assistant foremen, persons above the rank of non-working assistant foreman and sales and office staff." (109 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on revised voters' list		110
Number of persons who cast ballots		90
Number of ballots marked in favour of applicant	89	
Number of ballots marked in favour of intervener	1	

1529-75-R: Windsor Printing Pressmen and Assistant's Union Local 274 (Applicant) v. Herald Press Limited (Respondent) v. Graphic Arts International Union, Local 517 (Intervener).

Unit: "all employees of the respondent employed in its Bindery Department in the City of Windsor save and except foremen, persons above the rank of foreman, office and sales staff and persons covered by subsisting collective agreements." (3 employees in the unit). (*Having regard to the agreement of the parties*).

Number of persons on voters' list		3
Number of persons who cast ballots		3
Number of ballots marked in favour of applicant	3	
Number of ballots marked in favour of intervener	0	

1622-75-R: Canadian Chemical Workers Union (Applicant) v. Domtar Chemicals Limited, Sifto Salt Division, Goderich Mine (Respondent) v. International Chemical Workers' Union, Local 682 (Incumbent Trade Union).

Unit: "all employees of the respondent at its Goderich Mine, Sifto Salt Division, Goderich, Ontario, save and except assistant foremen, persons above the rank of assistant foremen, office and sales staff, engineering staff and laboratory staff." (218 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on revised voters' list		216
Number of persons who cast ballots		175
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	160	

Number of ballots marked in favour of Incumbent Trade Union	14
---	----

1638-75-R: Teamsters Local 879 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Arthur G. McKee and Company of Canada Limited (Respondent).

Unit: "all office and clerical employees of the respondent at its project at Nanticoke, in the County of Norfolk, save and except supervisors, persons above the rank of supervisor, engineering technicians, dispatchers, confidential secretaries, nurse, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (62 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on list as originally prepared by employer		64
Number of persons who cast ballots	60	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	48	
Number of ballots marked against applicant	11	

1656-75-R: Brewery, Soft Drink, Distillery, Distributors and Miscellaneous Workers Local 1000 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Henninger Brewery (Ontario) Ltd. (Respondent) v. Local Union 334, Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers (Intervener #1) v. Canadian Union of United Brewery, Flour Cereal, Soft Drink and Distillery Workers (formerly: International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America - C.L.C.) (Intervener #2).

Unit: "all employees of the company's plant at Hamilton, Ontario, save and except foremen, those above the rank of foreman, office, clerical and laboratory staff." (23 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on voters lists		23
Number of persons who cast ballots	22	
Number of ballots marked in favour of applicant	21	
Number of ballots marked in favour of intervener #1	1	

1687-75-R: Canadian Chemical Workers Union (Applicant) v. Drug Trading Company Limited (Respondent) v. Warehousemen and Miscellaneous Drivers, Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Intervener #1) v. International Chemical Workers Union and its Local 731 (Intervener #2).

Unit: "all employees of Drug Trading Company Limited employed in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office staff, Registered Pharmacists, and employees covered by all existing collective agreements." (174 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on revised voters' list		160
Number of persons who cast ballots	144	
Number of spoiled ballots	2	
Number of ballots marked in favour of applicant	77	
Number of ballots marked in favour of intervener #2	65	

1688-75-R: Canadian Chemical Workers Union (Applicant) v. Druggists' Corporation Limited (Respondent) v. International Chemical Workers Union and its Local 731 (Intervener).

Unit: "all employees of Druggists' Corporation Limited employed at Metropolitan Toronto, save and except foremen, foreladies, persons above the rank of foreman and forelady, all laboratory Personnel, and Office Staff." (53 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on revised voters' list		52
Number of persons who cast ballots		44
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	23	
Number of ballots marked in favour of intervener	20	

1703-75-R: Retail Clerks Union, Local 486 (Applicant) v. Goldstein I.G.A. Foodliner Limited (Respondent) v. Canadian Merchandising Employees Union Local No. 102 (Incumbent Trade Union).

Unit: "all employees of the Company employed in the Retail stores owned and/or operated by the Company in Ottawa, Ontario, save and except store managers, persons above the rank of store manager and persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (14 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on list as originally prepared by employer		14
Number of persons who cast ballots		14
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	12	
Number of ballots marked in favour of Incumbent Trade Union	1	

1704-75-R: Retail Clerks Union, Local 486 (Applicant) v. Goldstein I.G.A. Foodliner Limited (Respondent) v. Canadian Merchandising Employees Union Local No. 102 (Incumbent Trade Union).

Unit: "all employees of the Company in the retail stores owned and/or operated by the Company in Ottawa, Ontario, employed for not more than twenty-four hours per week and students hired for the school vacation." (19 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on revised voters' list		21
Number of persons who cast ballots		9
Number of ballots marked in favour of applicant	9	
Number of ballots marked in favour of Incumbent Trade Union	0	

1718-75-R: Canadian Union of Public Employees (Applicant) v. Hillcrest Hospital (Respondent) v. Canadian Union of General Employees (Incumbent Trade Union).

Unit: "all employees of the respondent at Toronto, Ontario, save and except supervisors, persons above the rank of supervisor, professional staff, medical staff, graduate and registered dietitians, technical personnel, social workers, all categories of therapists, office staff, persons regularly employed for not more than twenty-four (24) hours per week, and students employed during the school vacation period." (24) employees in the unit). (*Having regard to the agreement of the parties*).

Number of ballots marked in favour of Incumbent Trade Union	14
---	----

1638-75-R: Teamsters Local 879 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Arthur G. McKee and Company of Canada Limited (Respondent).

Unit: "all office and clerical employees of the respondent at its project at Nanticoke, in the County of Norfolk, save and except supervisors, persons above the rank of supervisor, engineering technicians, dispatchers, confidential secretaries, nurse, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (62 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on list as originally prepared by employer		64
Number of persons who cast ballots	60	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	48	
Number of ballots marked against applicant	11	

1656-75-R: Brewery, Soft Drink, Distillery, Distributors and Miscellaneous Workers Local 1000 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Henninger Brewery (Ontario) Ltd. (Respondent) v. Local Union 334, Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers (Intervener #1) v. Canadian Union of United Brewery, Flour Cereal, Soft Drink and Distillery Workers (formerly: International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America – C.L.C.) (Intervener #2).

Unit: "all employees of the company's plant at Hamilton, Ontario, save and except foremen, those above the rank of foreman, office, clerical and laboratory staff." (23 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on voters lists		23
Number of persons who cast ballots	22	
Number of ballots marked in favour of applicant	21	
Number of ballots marked in favour of intervener #1	1	

1687-75-R: Canadian Chemical Workers Union (Applicant) v. Drug Trading Company Limited (Respondent) v. Warehousemen and Miscellaneous Drivers, Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Intervener #1) v. International Chemical Workers Union and its Local 731 (Intervener #2).

Unit: "all employees of Drug Trading Company Limited employed in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office staff, Registered Pharmacists, and employees covered by all existing collective agreements." (174 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on revised voters' list		160
Number of persons who cast ballots	144	
Number of spoiled ballots	2	
Number of ballots marked in favour of applicant	77	
Number of ballots marked in favour of intervener #2	65	

1688-75-R: Canadian Chemical Workers Union (Applicant) v. Druggists' Corporation Limited (Respondent) v. International Chemical Workers Union and its Local 731 (Intervener).

Unit: "all employees of Druggists' Corporation Limited employed at Metropolitan Toronto, save and except foremen, foreladies, persons above the rank of foreman and forelady, all laboratory Personnel, and Office Staff." (53 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on revised voters' list		52
Number of persons who cast ballots		44
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	23	
Number of ballots marked in favour of intervener	20	

1703-75-R: Retail Clerks Union, Local 486 (Applicant) v. Goldstein I.G.A. Foodliner Limited (Respondent) v. Canadian Merchandising Employees Union Local No. 102 (Incumbent Trade Union).

Unit: "all employees of the Company employed in the Retail stores owned and/or operated by the Company in Ottawa, Ontario, save and except store managers, persons above the rank of store manager and persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (14 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on list as originally prepared by employer		14
Number of persons who cast ballots		14
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	12	
Number of ballots marked in favour of Incumbent Trade Union	1	

1704-75-R: Retail Clerks Union, Local 486 (Applicant) v. Goldstein I.G.A. Foodliner Limited (Respondent) v. Canadian Merchandising Employees Union Local No. 102 (Incumbent Trade Union).

Unit: "all employees of the Company in the retail stores owned and/or operated by the Company in Ottawa, Ontario, employed for not more than twenty-four hours per week and students hired for the school vacation." (19 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on revised voters' list		21
Number of persons who cast ballots		9
Number of ballots marked in favour of applicant	9	
Number of ballots marked in favour of Incumbent Trade Union	0	

1718-75-R: Canadian Union of Public Employees (Applicant) v. Hillcrest Hospital (Respondent) v. Canadian Union of General Employees (Incumbent Trade Union).

Unit: "all employees of the respondent at Toronto, Ontario, save and except supervisors, persons above the rank of supervisor, professional staff, medical staff, graduate and registered dieticians, technical personnel, social workers, all categories of therapists, office staff, persons regularly employed for not more than twenty-four (24) hours per week, and students employed during the school vacation period." (24) employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on list as originally prepared by employer		22
Number of persons who cast ballots	18	
Number of ballots marked in favour of applicant	16	
Number of ballots marked in favour of Incumbent Trade Union	2	

1719-75-R: Canadian Union of Public Employees (Applicant) v. VS Services Ltd. (Respondent) v. Canadian Union of General Employees (Incumbent Trade Union).

Unit: "all dietary employees of the respondent at Hillcrest Hospital, save and except supervisors, persons above the rank of supervisor, dietician, student dieticians, office staff, persons regularly employed for more than 24 hours per week and students employed during the school vacation period." (20 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on list as originally prepared by employer		17
Number of persons who cast ballots	15	
Number of ballots marked in favour of applicant	11	
Number of ballots marked in favour of incumbent Trade Union	4	

APPLICATIONS FOR CERTIFICATION DISMISSED

No Vote Conducted

1177-75-R: United Steelworkers of America (Applicant) v. N & D Supermarket Limited (Respondent) v. Group of Employees (Objectors). (163 employees).

1337-75-R: Canadian Union of Public Employees (Applicant) v. Browndale (Ontario) (Respondent). (102 employees).

1691-75-R: J. G. Sweet, Employer (Hotel Iroquois – Iroquois Falls, Ontario) (Applicant) v. United Steelworkers of America Local 13911 (Respondent). (5 employees).

1697-75-R: The International Union of Bricklayers, & Allied Craftsmen, Local #10, Kingston, Ontario (Applicant) v. St. Lawrence – Northdown Joint Venture (Respondents) v. International Brotherhood of Painters and Allied Trades, Local 1891 (Intervener). (3 employees).

1705-75-R: Canadian Union of Public Employees (Applicant) v. Metropolitan Separate School Board (Respondent). (91 employees).

1736-75-R: Canadian Union of Public Employees (Applicant) v. Metropolitan Separate School Board (Respondent). (91 employees).

1736-75-R: The Robert Hunt Company (London) Employees' Association (Applicant) v. Robert Hunt Company Limited (Respondent) v. United Brotherhood of Carpenters and Joiners of America (Intervener). (161 employees).

1752-75-R: Wood, Wire and Metal Lathers International Union Local 562 (Applicant) v. Active Tile and Carpet (Respondent) v. United Brotherhood of Carpenters & Joiners of America, Local 38 (Intervener) v. Group of Employees (Objectors). (3 employees).

1770-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. Rank City Wall Canada Limited (Respondent). (24 employees).

1795-75-R: Pharmacists and Professional Employees Union, Local 207 (Applicant) v. Armour Associates Ltd. (Respondent). (2 employees).

1810-75-R: Amalgamated Meat Cutters and Butcher Workmen of North America, A.F.L.-C.I.O.-C.L.C. (Applicant) v. Popsicle Industries (Respondent). (4 employees).

1826-75-R: Operative Plasterers and Cement Masons International Association of the United States and Canada Local Union no. 124, Ottawa - Hull (Applicant) v. Ecotec Environment (Respondent). (2 employees).

Certification Dismissed Subsequent to Pre-Hearing Vote

1583-75-R: Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers (Applicant) v. Coca-Cola Ltd. (Respondent) v. Group of Employees (Objectors).

Voting Constituency: "All employees of Coca-Cola Ltd. at its plant at Ottawa, Ontario, save and except office staff, sales supervisors, foremen, and persons above the rank of sales supervisor and foreman." (177 employees).

Number of names of persons on list as originally prepared by employer		178
Number of names of persons on revised voters' list	177	
Number of persons who cast ballots	170	
Ballots segregated and not counted	4	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	62	
Number of ballots marked against applicant	103	

1663-75-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Poole Electronic Supplies Limited (Respondent).

Unit: "all office, clerical, and salesmen of the respondent save and except supervisors, persons above the rank of supervisor, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (14 employees in the unit).

Number of names of persons on voters' list		12
Number of persons who cast ballots	12	
Number of ballots marked in favour of applicant	3	
Number of ballots marked against applicant	9	

1664-75-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. Poole Electronic Supplies Limited (Respondent).

Unit: "all employees of the respondent at London, save and except assistant manager, persons above the rank of assistant manager, office and territory sales staff, persons regularly employed during the school vacation period." (9 employees in the unit).

Number of names of persons on voters' list		8
Number of persons who cast ballots		8
Number of ballots marked in favour of applicant	3	
Number of ballots marked against applicant	5	

APPLICATIONS FOR CERTIFICATION WITHDRAWN

0896-75-R: Retail Clerks International Association (Applicant) v. G. Tamblyn Limited (Respondent). (4 employees).

1696-75-R: Ontario Nurses' Association (Applicant) v. Groves Memorial Community Hospital (Respondent). (74 employees).

1706-75-R: International Molders & Allied Workers Union (Applicant) v. Unimatic Bulk Curing Systems (Respondent). (4 employees)

1713-75-R: Labourers International Union of North America, Local #493 (Applicant) v. Pioneer Construction Inc. (Respondent). (3 employees).

1717-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. Towergate Corporation Limited (Glenway Builders Ltd.) (Respondent). (2 employees).

1740-75-R: International Molders & Allied Workers Union (Applicant) v. Goodwill Electric Supplies Ltd. (Respondent) (6 employees).

1756-75-R: International Association of Machinists and Aerospace Workers (Applicant) v. Sault Century Motors Ltd. (Respondent). (6 employees).

1767-75-R: United Cement and Gypsum Workers International Union, A.F.L. C.I.O. C.L.C. (Applicant) v. Custom Aggregates (Respondent). (12 employees).

1801-75-R: Service Employees International Union Local 204, A.F.L. - C.I.O. - C.L.C. (Applicant) v. The Wellesley Hospital (Respondent) v. Canadian Union of Operating Engineers (Intervener). (91 employees).

1818-75-R: International Union of Operating Engineers Local 793 (Applicant) v. Anchor Shoring Ltd. (Respondent). (7 employees).

1825-75-R: Labourers' International Union of North America, Local 506 (Applicant) v. Commercial Enterprises and Huron Square Albion (Respondent). (4 employees).

1838-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. A.E. LePage Limited (Property Management Division) (Respondent). (2 employees).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

1253-75-R: James Macaluso, Andy Stanois, Vito Barbieri, Giuseppe Tricinci (Applicants) v. Canadian Union of Operating Engineers, Local 101 (Respondent) v. Olympia & York Developments Limited (Intervener). (*Dismissed*).

Unit: "all employees of Olympia & York Developments Limited employed at 789 Don Mills Road (Foresters Building), Toronto, save and except Assistant Superintendent, persons above the rank of Assistant Superintendent, office and sales staff, Security Officers, and persons regularly employed for not more than twenty-four (24) hours per week." (8 employees in the unit).

Number of names of persons on revised voters' list		10
Number of persons who cast ballots	9	
Number of ballots marked in favour of Respondent	7	
Number of ballots marked against Respondent	2	

1570-75-R: John Gute (Applicant) v. Local 92 International Moulders and Allied Workers Union (Respondent) v. Mitten Industries Galt Limited on behalf of its Affiliate Company, Field-Price Ltd. (Intervener). (12 employees). (*Dismissed*).

1589-75-R: Brian Skomash (Applicant) v. United Brotherhood of Carpenters and Joiners of America - Millworkers Local 802 (Respondent) v. Cashway Lumber Company Ltd. (Intervener). (*Granted*).

Unit: "all employees of Cashway Lumber Company Ltd. at Windsor, Ontario, save and except foremen, persons above the rank of foreman, and outside sales staff, and persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (8 employees in the unit).

Number of names of persons on list as originally prepared by employer		8
Number of persons who cast ballots	8	
Number of ballots marked in favour of respondent	3	
Number of ballots marked against respondent	5	

1692-75-R: Employees of Boston Motors (Applicant) v. International Association of Machinists and Aerospace Workers, Lodge #2332 (Respondent). (12 employees). (*Withdrawn*).

1715-75-R: Campbellford Memorial Hospital (Applicant) v. Canadian Union of Public Employees (Respondent). (4 employees). (*Dismissed*).

1721-75-R: Lee Charles Cummings (Applicant) v. Retail, Wholesale and Department Store Union, AFL-CIO-CLC; and its Local 440 (Respondent). (2 employees). (*Granted*).

1735-75-R: Transport Personnel and Placement Limited (Applicant) v. United Steel Workers of America (Respondent). (9 employees). (*Granted*).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL

1755-75-U: Sillman Company (Northern) Limited (Applicant) v. The International Association of Bridge, Structural and Ornamental Iron Workers, Local Union 759 (Respondent). (*Withdrawn*).

1790-75-U: Sandwich, Windsor & Amherstburg Railway Company (Applicant) v. Division 616 of the Amalgamated Transit Union (Respondent). (*Withdrawn*).

1829-75-U: Windsor Electrical Contractors Association (Applicant) v. Local Union 773, of the International Brotherhood of Electrical Workers, Neil McLean (Respondents). (*Direction*).

APPLICATIONS FOR CONSENT TO PROSECUTE

1331-75-U: Libby, McNeill & Libby of Canada Limited (Applicant) v. Local 107, Canadian Union of Operating Engineers and Clifford J. Scott (Respondents). (*Dismissed*).

1823-75-U: The Lummus Company Canada Limited (Applicant) v. T. Hnatkowski et al (Respondents). (*Withdrawn*).

COMPLAINTS UNDER SECTION 79 (UNFAIR LABOUR PRACTICE)

0039-75-U: Joseph Cumbo (Complainant) v. Union of Canadian Retail Employees; Dan Gilbert and Alex Beattie (Respondents). (*Dismissed*).

1084-75-U: Teamsters Union Local 91 (Complainant) v. Hugh M. Grant Limited (Respondent). (*Withdrawn*).

1124-75-U: United Electrical, Radio and Machine Workers of America (UE) (Complainant) v. DeVilbiss (Canada) Limited (Respondent). (*Granted*).

1200-75-U: Amalgamated Meat Cutters and Butcher Workmen of North America (Complainant) v. Primo Importing & Distributing Co. Limited (Respondent). (*Granted*).

1291-75-U: Warehousemen and Miscellaneous Drivers Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Complainant) v. F. W. Woolworth Co. Ltd. (Respondent).

- and -

1292-75-U: Warehousemen and Miscellaneous Drivers Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Complainant) v. F. W. Woolworth Co. Ltd. (Respondent).

- and -

1293-75-U: Warehousemen and Miscellaneous Drivers Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Complainant) v. F. W. Woolworth Co. Ltd. (Respondent).

- and -

1294-75-U: Warehousemen and Miscellaneous Drivers Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Complainant) v. F. W. Woolworth Co. Ltd. (Respondent).

- and -

1334-75-U: Warehousemen and Miscellaneous Drivers Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Complainant) v. F. W. Woodworth Co. Ltd. (Respondent). (*Dismissed*).

1574-75-U: Canadian Union of Public Employees (Complainant) v. Biwest Contracting Ltd., Cornwall Division (Respondent). (*Withdrawn*).

1582-75-U: Canadian Union of Public Employees (Complainant) v. Browndale (Ontario) Limited (Respondent). (*Dismissed*).

1628-75-U: Canadian Food and Allied Workers Local 725, chartered by Amalgamated Meat Cutters and Butcher Workmen of North America, A.F.L., C.I.O., C.L.C. (Complainant) v. S. S. Kresge Company Limited (Respondent). (*Dismissed*).

1629-75-U: Canadian Food and Allied Workers Local 725 chartered by Amalgamated Meat Cutters and Butcher Workmen of North America, A.F.L., C.I.O., C.L.C. (Complainant) v. S. S. Kresge Company Limited (Respondent). (*Withdrawn*).

1641-75-U: Canadian Union of Security Guards (Complainant) v. Centurion Security Services (Respondent). (*Withdrawn*).

1669-75-U: Mr. Derek Woodman (Complainant) v. United Auto Workers Local 717 (Respondent). (*Dismissed*).

1670-75-U: Teamsters Local Union No. 879, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Complainant) v. Provincial Sanitation Services Limited (Respondent). (*Withdrawn*).

1673-75-U: Toronto Typographical Union No. 91 (Complainant) v. C C H Canadian Limited (Respondent). (*Withdrawn*).

1678-75-U: Canadian Union of Operating Engineers, Local 104 (Complainant) v. The Homewood Sanitarium of Guelph, Ontario, Ltd. (Respondent). (*Withdrawn*).

1682-75-U: London and District Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Complainant) v. Canadian Linen Supply (Ontario) Limited, London, Ontario (Respondent). (*Withdrawn*).

1683-75-U: Upholsters International Union of North America (Complainant) v. Craftline Industries Ltd. (Respondent). (*Withdrawn*).

1698-75-U: Mr. Norman Hague and Mr. Ronald Doran (Complainants) v. U.A.W. Local 1967 (Respondent). (*Withdrawn*).

1714-75-U: Metal Polishers, Buffers, Platers and Allied Workers International Union (Complainant) v. Rembrandt Jewelry Limited (Respondent). (*Withdrawn*).

1722-75-U: Austin Yott (Complainant) v. United Steelworkers of America Local 6320 (Respondent). (*Withdrawn*).

1723-75-U: James Barclay (Complainant) v. International Brotherhood of boilermakers Local 128 and Companies Named in Schedule 'A' (Respondents) (*Withdrawn*).

1729-75-U: Canadian Union of Public Employees and its Local 1776 (Complainant) v. The City of Brampton Public Library Board (Respondent).(*Withdrawn*).

1734-75-U: Canadian Union of Operating Engineers (Complainant) v. Retail, Wholesale, Dairy and General Workers Union (Respondent). (*Withdrawn*).

1751-75-U: Eileen Adams (Complainant) v. International Chemical Workers (Respondent). (*Withdrawn*).

1758-75-U: Witold Korsak (Complainant) v. International Union of Operating Engineers Local 793, B. (Respondent). (*Dismissed*).

1762-75-U: Local 49 Upholsters International Union of North America A.F.L., C.I.O. (Complainant) v. Nestings Furniture Ltd. (Respondent). (*Withdrawn*).

1781-75-U: Vernon A. Hill, 89 Westrose Ave, Toronto, Ont. M8X 2A4 (Complainant) v. Teamsters Local 1000, 400 Kipling Ave., Toronto, Ont. M8V 3L2 (Respondent). (*Withdrawn*).

1784-75-U: Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Complainant) v. Primo Importing and Distributing Company Limited (Respondent). (*Withdrawn*).

1843-75-U: Canadian Union of Operating Engineers Local 103 (Complainant) v. Douglas Memorial Hospital (Respondent). (*Withdrawn*).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

1815-75-M: G C O Employees Association (Trade Union) v. Granny's Country Oven Bakery Limited (Employer).

1835-75-M: The Retail, Wholesale and Department Store Union, Local 440 – A.F.L. – C.I.O. – C.L.C. (Trade Union) v. Abbott Laboratories Limited [Formerly Cow & Gate (Canada) Limited, Brockville, Ontario], (Employer).

APPLICATION FOR DETERMINATION UNDER SECTION 95(2)

0673-75-M: Canadian Union of Public Employees, Local #207, C.L.C. (Trade Union) v. The Corporation of the City of Sudbury (Employer). (*Granted*).

REFERENCE TO BOARD PURSUANT TO SECTION 96

1631-75-M: Libby, McNeill & Libby of Canada Limited (Employer) v. Canadian Union of Operating Engineers, Local 107 (Trade Union).

APPLICATIONS UNDER SECTION 112a

1532-75-M: Labourers' International Union of North America, Local 506 and Labourers' International Union of North America, Ontario Provincial District Council (Applicants) v. Ontario Precast Concrete Manufacturers Association and General Concrete Ltd. (Respondents). (*Withdrawn*).

1533-75-M: Labourers' International Union of North America, Local 506 and Labourers' International Union of North America, Ontario Provincial District Council (Applicants) v. Ontario Precast Concrete Manufacturers Association and General Concrete Ltd. (Respondents). (*Withdrawn*).

1578-75-M: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 46 (Applicant) v. Will-Fran Heating Co. Limited (Respondent). (*Withdrawn*).

1626-75-M: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union 46 (Applicant) v. Spanton Plumbing & Heating Limited (Respondent). (*Granted*).

1780-75-M: International Union of Operating Engineers, Local 793 (Applicant) v. Boon's Crane Service Ltd. (Respondent). (*Withdrawn*).

1804-75-M: International Association of Bridge, Structural and Ornamental Iron Workers, Local Union 721 (Applicant) v. Adam Clark Company Ltd., The Ontario Erectors Association (Adam Clark is a member of Association) (Respondent). (*Withdrawn*).

1806-75-M: United Brotherhood of Carpenters and Joiners of America, Local Union 446 (Applicant) v. Knudsens Painters & Decorators Limited (Respondent). (*Withdrawn*).

1875-75-M: United Brotherhood of Carpenters & Joiners of America, Local Union 38 (Applicant) v. John Tries Construction Limited (Respondent). (*Withdrawn*).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION

0712-75-R: Oil & Gas Technicians, Service, Domestic and General Workers Union, Local 1267 (Applicant) v. Neo Industries Limited (Respondent). *Certification. (Request Denied).*

0978-75-U: Libby, McNeill and Libby of Canada, Limited (Applicant) v. Local 107, Canadian Union of Operating Engineers, and Manse Williams and Others (Respondents). *Strike Unlawful. (Request Denied).*

1523-75-U: E. Schweizer (Complainant) v. Amalgamated Transit Union, Local 113 (Respondent). *Section 79. (Request Denied).*

0945-75-M: The Toronto Building and Construction Trades Council (Applicant) v. Napev Construction Limited and Vepan Leaseholds Limited (Respondents). *(Dismissed). Section 112A. (Request Denied).*

STATISTICAL TABLES FOR 4TH QUARTER AND OF FISCAL YEAR 1975-76

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	Number Filed		
	4th Quarter (Jan - Mar) 1975-76	Fiscal Year	
		1975-76	1974-75
I. Certification	222	1125	1333
II. Declaration Terminating Bargaining Rights	17	64	57
III. Declaration of Successor Status	3	32	62
IV. Declaration that Strike Unlawful	15	99	96
V. Declaration that Lock-Out Unlawful	1	2	6
VI. Consent to Prosecute	13	127	146
VII. Complaint of Unfair Practice in Employment (Section 79)	86	303	194
VIII. Miscellaneous	73	188	262
TOTAL	<u>430</u>	<u>1940</u>	<u>2156</u>

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	Number		
	4th Quarter (Jan - Mar) 1975-76	Fiscal Year	
		1975-76	1974-75
Hearings and Continuation of Hearings by the Board	323	1358	1273

October to December.

TABLE III

**APPLICATIONS AND COMPLAINTS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD BY MAJOR TYPES**

	Number Disposed of		
	4th Quarter (Jan – Mar) 1975-76	Fiscal Year	
		1975-76	1974-75
I. Certification	239	1185	1364
II. Declaration Terminating Bargaining Rights	22	67	53
III. Declaration of Successor Status	—	19	44
IV. Declaration that Strike Unlawful	7	74	82
V. Declaration that Lock-Out Unlawful	1	1	6
VI. Consent to Prosecute	11	96	126
VII. Complaint of Unfair Practice in Employment (Section 79)	72	270	205
VIII. Miscellaneous	49	146	268
	—	—	—
TOTAL	401	1858	2148
	==	==	==

TABLE IV

APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPE AND DISPOSITION

	Number of Applications			Number of Employees*		
	4th Quarter	Fiscal Year		4th Quarter	Fiscal Year	
	(Jan - Mar)	1975-76	1974-75	(Jan - Mar)	1975-76	1974-75
I. Certification						
Granted	163	782	916	6368	29330	28813
Dismissed	45	233	295	2035	10404	16656
Withdrawn	31	170	153	615	3576	4348
	—	—	—	—	—	—
TOTAL	239	1185	1364	9018	43310	49817
	==	==	==	==	==	==
II. Termination of Bargaining Rights						
Granted	14	40	22	244	698	610
Dismissed	7	24	26	240	634	814
Withdrawn	1	3	5	12	351	1381
	—	—	—	—	—	—
TOTAL	22	67	53	496	1683	2805
	==	==	==	==	==	==

*These figures refer to the number of employees directly affected and are based on the number of employees in the bargaining units at the time the applications for certification were filed with the Board. Totals for applications dismissed and withdrawn are approximate.

TABLE IV

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY TYPE AND DISPOSITION (CONTINUED)

		Number of Applications		
		4th Quarter (Jan – Mar) 1975-76	Fiscal Year	
			1975-76	1974-75
III.	Declaration that Strike Unlawful			
	Granted	3	34	11
	Dismissed	–	12	18
	Withdrawn	4	28	53
	TOTAL	<u>7</u>	<u>74</u>	<u>82</u>
IV.	Declaration that Lock-Out Unlawful			
	Granted	–	–	–
	Dismissed	–	–	2
	Withdrawn	1	1	4
	TOTAL	<u>1</u>	<u>1</u>	<u>6</u>
V.	Consent to Prosecute			
	Granted	–	11	11
	Dismissed	3	16	29
	Withdrawn	8	69	86
	TOTAL	<u>11</u>	<u>96</u>	<u>126</u>
VI.	Complaint of Unfair Practice in Employment (Section 79)			
	Granted	5	20	13
	Dismissed	19	69	84
	Withdrawn	48	181	108
	TOTAL	<u>72</u>	<u>270</u>	<u>205</u>

TABLE V

**REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS
DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD**

	Number of Votes		
	4th Quarter (Jan – Mar) 1975-76	Fiscal Year	
		1975-76	1974-75
Certification after Vote*			
Pre-hearing Vote	33	77	61
Post-hearing Vote	6	64	92
Ballots not Counted	–	1	–
Dismissed after Vote			
Pre-hearing Vote	6	35	75
Post-hearing Vote	8	48	55
Ballots not Counted	2	3	2
TOTAL	<u>55</u>	<u>228</u>	<u>285</u>

*Includes applicant-intervener applications in which both applicant and intervener apply for a new unit and either applicant or intervener is certified.

TABLE VI

**REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS
DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD**

	Number of Votes		
	4th Quarter (Jan – Mar) 1975-76	Fiscal Year	
		1975-76	1974-75
*Respondent Union Successful	1	4	5
Respondent Union Unsuccessful	9	29	18
TOTAL	<u>10</u>	<u>33</u>	<u>23</u>

*In Termination Proceedings where a vote is taken the applicant is a group of employees or the employer; the incumbent union is thus the respondent.



Labour
Relations Board

Decisions April 76

Government
Publications

QNL R
Q54



ONTARIO LABOUR RELATIONS BOARD

Acting Chairman RORY F. EGAN

Vice-Chairmen F.V. BOSCARIOL
K.M. BURKETT
D.D. CARTER
G.S.P. FERGUSON, Q.C.
R.A. FURNESS
D.H. KATES

Members H.J.F. ADE
D.B. ARCHER
J.D. BELL
E. BOYER
F. KEEN
A. GRIBBEN
L. HEMSWORTH
A. HERSHKOVITZ
O. HODGES
F.W. MURRAY
P.J. O'KEEFFE
J.E.C. ROBINSON, Q.C.
N. SATTERFIELD
H. SIMON
R. WHITE
W.H. WIGHTMAN

Executive Assistant to the Chairman S.D. SAXE *Registrar* A.M. BRUNSKILL

Solicitor R.O. MACDOWELL

Editor, Monthly Report S.D. SAXE

**ONTARIO
LABOUR RELATIONS BOARD
REPORTS**

**A Monthly Series of Decisions from the
Ontario Labour Relations Board**

Cited [1976] OLRB REP.

CASES REPORTED

Dungey, Clarence, Re John deP. Wright	130
Ernie's Signs Ltd. Re Roger Dubois	125
Haviland Drug Ltd. Re RCIA	141
IBEW, of L U 773, Neil McLean Re Windsor Electrical Contractors Assoc.	174
Lake Ont. Steel Co. Ltd. Re Kraan, John, And USA, L 6571	145
Neo Industries Ltd. Re UE And Oil & Gas Technicians, Serv., Domestic & General Workers U., L 1267	137
N-J Spivak Ltd. Re Teamsters L 141 aff'l with TCWH and group of Employees	158
Pigott Const. Ltd. And C. W. Howard, PPF, L U 46, A. Reinert, G. Goetz, T. Moase, D. Pasley, R. Gemmill, F. Batstone, C. Herder, K. Herder, & J. Coghlin	161
Seven-Eleven Taxi Ltd. Re Ont. Taxi Assoc	134
Sidell, Wm., Wm. Stefanovitch & T.G. Harkness Re D.L. Noble, Arnold Marsman & Ar- thur Dix	128
Trench Elec. Ltd. Re UE And Group of Employees	163
Trench Elec. Ltd. Re UE And Group of Employees	167
Trench Elec. Ltd. Re UE And Group of Employees	170
T.R.S. Food Serv. Ltd. Re Retail Clerks U., L 206 And RWDSU, AFL:CIO:CLC And Group of Employees	156
T.R.S. Food Serv. Ltd. Re Retail Clerks U., L 206 And RWDSU, AFL:CIO:CLC And Group of Employees and RWDSU, AFL:CIO:CLC And T.R.S. Food Serv. Ltd. And Retail Clerks U., L 206 And Group of Employees	154
Woolworth, F. W., Co. Ltd. Re Warehousemen & Miscellaneous Drivers L U 419 aff'l with TCWH	148
York University Re York University Faculty Assoc. And Osgoode Hall Faculty Assoc. And Group of Employees And Professor Rein Peterson And Professor William A. Jordon	181
York University Re York University Faculty Assoc. And Osgoode Hall Faculty Assoc. And Group of Employees And Professor Rein Peterson And Professor William A. Jordon And Professor D. McCormack Smyth	187

INDEX OF CASES

- Arbitration – S123 – S112a – Where an arbitration application is filed after a Strike application – Whether the Board will delay hearing the strike application in order to hear both applications at the same time – Strike – Where the collective agreement provided under certain circumstances for a reduced number of hours in the work week. Whether a strike existed when the union unilaterally decided the circumstances existed and instructed its members to work the shorter number of hours.
- WINDSOR ELECTRICAL CONTRACTORS ASSOCIATION v. LOCAL UNION 773, OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, NEIL McLEAN 174
- Build-Up – Certification – S5(2) – Whether previous certification of intervener a bar to application – Whether earlier certificate obtained by fraud – Whether failure to disclose a pending build up or to list as possibly affected by an application a union with representation rights at other plants constitutes a fraud.
- UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) v. NEO INDUSTRIES LIMITED v. OIL & GAS TECHNICIANS, SERVICE, DOMESTIC AND GENERAL WORKERS UNION, LOCAL 1267 137
- Certification – Build-Up – S5(2) – Whether previous certification of intervener a bar to application – Whether earlier certificate obtained by fraud – Whether failure to disclose a pending build up or to list as possibly affected by an application a union with representation rights at other plants constitutes a fraud.
- UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) v. NEO INDUSTRIES LIMITED v. OIL & GAS TECHNICIANS, SERVICE, DOMESTIC AND GENERAL WORKERS UNION, LOCAL 1267 137
- Certification – Evidence – Whether the Board will allow a party to call a witness to impeach the credibility of witnesses called by the same party – Certification procedure – S7(2) – Procedure followed by the Board where two applicants file evidence of membership support in excess of 55%.
- RETAIL CLERKS UNION, LOCAL 206 v. T.R.S. FOOD SERVICE LIMITED v. RETAIL WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC v. GROUP OF EMPLOYEES and RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC v. T.R.S. FOOD SERVICE LIMITED v. RETAIL CLERKS UNION, LOCAL 206 v. GROUP OF EMPLOYEES 154
- Certification – Pharmacists – Whether pharmacists employed at Drug Stores excluded as managerial – S1(3)(b).
- RETAIL CLERKS INTERNATIONAL ASSOCIATION v. HAVILAND DRUG LIMITED 141
- Charges – Procedure – Adjournment – Whether the Board will grant an adjournment where the filing of charges catches a party by surprise – Whether the party filing the charges will be granted an adjournment.
- RETAIL CLERKS UNION, LOCAL 206 v. T.R.S. FOOD SERVICE LIMITED v. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:-CLC v. GROUP OF EMPLOYEES 156

Consent to Prosecute – S90(2) – Whether the Act allows a ‘private citizen’ to apply for consent to prosecute – Whether the Board will grant consent to a ‘private citizen’.

JOHN DEP. WRIGHT v. CLARENCE DUNGEY 130

Discharge For Union Activity – S79(4a) – Whether employees laid off because of seasonal business slow down – Whether evidence of employer knowledge of union activity created by union – Whether complainant must adduce evidence as to organizational campaign.

WAREHOUSEMEN AND MISCELLANEOUS DRIVERS LOCAL UNION NO. 419 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA v. F.W. WOOLWORTH CO. LTD 148

Discharge For Union Activity – S79(4a) – Whether laid off because of business slump or discharged for union activity – Effect of S79(4a) – Effect of lay off closely following employer gaining knowledge of union activity.

ROGER DUBOIS v. ERNIE’S SIGNS LIMITED 125

Employees – Dependent Contractors – S1(1)(ga) – Whether taxi owners dependent contractors – Whether economic relationship more closely resembles employee than independent contractor.

ONTARIO TAXI ASSOCIATION v. SEVEN-ELEVEN TAXI LTD 134

Evidence – Certification – Whether the Board will allow a party to call a witness to impeach the credibility of witnesses called by the same party – Certification procedure – S7(2) – Procedure followed by the Board where two applicants file evidence of membership support of excess of 55%

RETAIL CLERKS UNION, LOCAL 206 v. T.R.S. FOOD SERVICE LIMITED v. RETAIL WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC v. GROUP OF EMPLOYEES AND RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:CLC v. T.R.S. FOOD SERVICE LIMITED v. RETAIL CLERKS UNION, LOCAL 206 v. GROUP OF EMPLOYEES 154

Petition – Effect of originator of petition meeting and discussing working conditions with management, being granted time off to circulate petition and discussing with petitioners improvements company would consider.

TEAMSTERS LOCAL 141 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA v. N-J SPIVAK LIMITED v. GROUP OF EMPLOYEES 158

Petition – Reconsideration – Whether the Board has the onus to investigate the voluntariness of a petition – Effect of petitioners not producing witnesses’ as to how each of the signatures were obtained – Whether evidence as to how envelopes containing petitions were obtained can meet requirement of evidence as to how signatures obtained.

UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) v. TRENCH ELECTRIC LIMITED v. GROUP OF EMPLOYEES 167

Petition – Witnesses – Reconsideration – Whether handing employees blank petitions and having them later deposit them, in a sealed envelope, in a “ballot box” meets the Boards requirement of evidence of the voluntary nature of the petition – Whether the Board will grant an adjournment to allow a witness to a petition to be subpoenaed were the witness could have been subpoenaed in the first place.	
UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) v. TRENCH ELECTRIC LIMITED v. GROUP OF EMPLOYEES	170
Petition – Where resolution of bargaining unit disputes may result in the petition not having sufficient overlap to result in a vote being conducted. Whether the Board will enquire into the validity of the petition before the unit is settled – Effect of S6(1a) – Whether petitions obtained by distributing blank forms and having employees place them in a “ballot box” can meet the Board’s evidentiary requirement as to the circumstances in which the signatures were obtained.	
UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) v. TRENCH ELECTRIC LIMITED v. GROUP OF EMPLOYEES	163
Procedure – Adjournment – Charges – Whether the Board will grant an adjournment where the filing of charges catches a party by surprise – Whether the party filing the charges will be granted an adjournment.	
RETAIL CLERKS UNION, LOCAL 206 v. T.R.S. FOOD SERVICE LIMITED v. RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, AFL:CIO:-CLC v. GROUP OF EMPLOYEES	156
Reconsideration – Petition – Whether the Board has the onus to investigate the voluntariness of a petition – Effect of petitioners not producing witnesses’ as to how each of the signatures were obtained – Whether evidence as to how envelopes containing petitions were obtained can meet requirement of evidence as to how signatures obtained.	
UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) v. TRENCH ELECTRIC LIMITED v. GROUP OF EMPLOYEES	167
Reconsideration – Petition – Witnesses – Whether handing employees blank petitions and having them later deposit them, in a sealed envelope, in a “ballot box” meets the Boards requirement of evidence of the voluntary nature of the petition – Whether the Board will grant an adjournment to allow a witness to a petition to be subpoenaed were the witness could have been subpoenaed in the first place.	
UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) v. TRENCH ELECTRIC LIMITED v. GROUP OF EMPLOYEES	163
Reconsideration – S95(1) – Whether the Board will reconsider decision granting status to applicant – Effect of parties seeking reconsideration having had ample opportunity to adduce evidence at first hearing.	
YORK UNIVERSITY FACULTY ASSOCIATION v. YORK UNIVERSITY v. OSGOODE HALL FACULTY ASSOCIATION v. GROUP OF EMPLOYEES v. PROFESSOR REIN PETERSON v. PROFESSOR WILLIAM A. JORDAN v. PROFESSOR D. McCORMACK SMYTH	187
S79 – Strike – Strike Vote – S63(5) – Whether complainant given ample opportunity to cast a ballot – Whether temporary foreman properly excluded from vote – Whether Board will order vote and related meetings reconducted.	

KRAAN, JOHN, v. UNITED STEELWORKERS OF AMERICA, LOCAL 6571 v. LAKE ONTARIO STEEL COMPANY LIMITED	145
S123 – Arbitration – S112a – Where an arbitration application is filed after a Strike application. Whether the Board will delay hearing the strike application in order to hear both applications at the same time – Strike – Where the collective agreement provided under certain circumstances for a reduced number of hours in the work week. Whether a strike existed when the union unilaterally decided the circumstances existed and instructed its members to work the shorter number of hours.	
WINDSOR ELECTRICAL CONTRACTORS ASSOCIATION v. LOCAL UNION 773, OF THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, NEIL McLEAN	174
S123 – Strike – Effect of applicant engaging in provocative conduct as to the assignment of certain work – Board granting interim order and directing further hearing.	
PIGOTT CONSTRUCTION LIMITED v. C. W. HOWARD, UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPE FITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL UNION NO. 46, A. REINERT, G. GOETZ, T. MOASE, D. PASLEY, R. GEMMILL, F. BATSTONE, C. HERDER, K. HERDER, AND J. COGHLIN	161
Strike – S79 – Strike Vote – S63(5) – Whether complainant given ample opportunity to cast a ballot – Whether temporary foreman properly excluded from vote – Whether Board will order vote and related meetings reconducted.	
KRAAN, JOHN, v. UNITED STEELWORKERS OF AMERICA, LOCAL 6571 v. LAKE ONTARIO STEEL COMPANY LIMITED	145
Trade Union – Status – S1(1)(n) – Effect of faculty association admitting administrative personnel to membership – S12 – Effect of concessions granted by employer to association including dues deduction and use of facilities – Effect of past irregularities on decision as to status.	
YORK UNIVERSITY FACULTY ASSOCIATION v. YORK UNIVERSITY v. OSGOOD HALL FACULTY ASSOCIATION v. GROUP OF EMPLOYEES v. PROFESSOR REIN PETERSON v. PROFESSOR WILLIAM A. JORDAN	181
Trusteeship – S73(2) – Whether supervisors in violation of earlier Board decision not to allow extension of trusteeship.	
D.L. NOBLE, ARNOLD MARSMAN AND ARTHUR DIX v. WM. SIDELL, WM. STEFANOVITCH AND T.C. HARKNESS	128
Witnesses – Reconsideration – Petition – Whether handing employees blank petitions and having them later deposit them, in a sealed envelope, in a “ballot box” meets the Boards requirement of evidence of the voluntary nature of the petition – Whether the Board will grant an adjournment to allow a witness to a petition to be subpoenaed were the witness could have been subpoenaed in the first place.	
UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) v. TRENCH ELECTRIC LIMITED v. GROUP OF EMPLOYEES	163

1285-75-U Roger Dubois, (Complainant), v. Ernie's Signs Limited, (Respondent).

Discharge for Union Activity – S79(4a) – Whether laid off because of business slump or discharged for union activity – Effect of S79(4a) – Effect of lay off closely following employer gaining knowledge of union activity.

BEFORE: Kevin M. Burkett, Vice-Chairman and Board Members P.J. O'Keeffe and F.W. Murray.

APPEARANCES: *K.R. Valin and Normand Coutu for the applicant; Richard A. Humphrey for the respondent.*

DECISION OF THE BOARD: April 23, 1976

1. This is a complaint brought under Section 79 of the Act wherein the complainant alleges that he was laid off and subsequently terminated contrary to section 58(a) of The Labour Relations Act.

2. The evidence establishes that the complainant, Roger Dubois, was first hired by the respondent company in July of 1972 and worked for the respondent company as a "helper" until the time of his lay-off on February 19, 1975. It was acknowledged by the complainant that Mr. Dubois was a good worker and it was established in evidence that he had worked at most facets of the sign business. Mr. N. Couteau, the Vice-President of the respondent company referred to him as a "Jack of all trades" and stated that the company would be prepared to take him back if sufficient work was available. Mr. Dubois was laid off on February 19, 1975 along with three other employees also classified as helpers. These were: Mr. M. Demers who had one month of service at the time of lay-off; Mr. J. White who had about three months of service at the time of lay-off and Mr. D. Lacourcier who also had about three months of service at the time of lay-off. Mr. Dubois had in excess of 31 months of service at the time of lay-off and had never been laid-off or terminated during this time. The reason for the lay-offs as stated in the February 19th letter was lack of work. Mr. Dubois was subsequently notified by letter dated June 3, 1975 that the waiting period required by the Employment Standards Act having expired, he was being terminated. Although Mr. Dubois did not contact the company at any time subsequent to February 19, 1975 he immediately contacted the Retail Wholesale and Department Store Employees Union and later approached his local MPP.

3. The evidence establishes that the complainant, Mr. Dubois, was actively involved in bringing about the application for certification which was filed on *February 11, 1975* on behalf of the employees of the respondent company. He had discussed the working conditions and terms of employment with one Gaston Lemieux, another employee of the respondent, and although the actual date is somewhat unclear, held a meeting at his home in late 1974 at which most of the respondent's employees attended. A second meeting was called at Mr. Dubois' home a few days later at which time the decision was taken to approach the Retail Wholesale and Department Store Union. Cards were signed and Mr. Dubois was elected Chief Steward by the employees.

4. Mr. Norman Couteau, the Vice-President of the respondent company and the person who authorized the lay-offs, first became aware of the efforts of his employees to unionize on or about February 14, 1975 when he received notice of the application for certification. Shortly after receiving the notice he addressed the employees of the respondent (during the noon hour of February 14, 1975) and indicated to them that he was not happy with their decision to unionize and gave them three days (terminal date) to change their minds. He specifically asked the complainant if he was aware of the application when the two had been speaking earlier in the day and later asked Mr. G. Proulx if he was the instigator. The lay-off of Mr. Dubois occurred some four days later. The explanation given in evidence by Mr. Couteau in respect of the lay-offs centered on the annual seasonal downturn in business. He testified as to the sales volume of the company in January, February and July of 1973, 1974 and 1975. He testified that the company had in the past laid off employees in mid-Winter because of the seasonal downturn. (Two employees were laid off in mid-Winter 1974). The sales volume of the company was \$28,300 (as invoiced) in January, 1975, \$19,500 in February, 1975, \$16,900 in March, 1975 and \$25,100 in July, 1975. Mr. Couteau testified that the percentage drop in business from January to February, 1975, (in excess of 30% was particularly severe thereby necessitating the lay-off of all of the helpers. The four employees who were laid-off were not recalled other than Mr. Lacourcier who had indicated a willingness to work on a day to day basis and who was given transitory work during the period of lay-off. Mr. Dubois was terminated on June 3, 1975 after the statutory waiting period because of the continuing downturn in business which, in Mr. Couteau's opinion, precluded the retention or hiring of additional permanent employees.

5. This complaint was brought before the Board under the provisions of section 79 of the Act. This section has been recently amended and provides that in complaints of this type the burden of proof lies upon the employer to establish, on the balance of probabilities, that he did not act contrary to the Act. Section 79(4a) reads:

"On an inquiry by the Board into a complaint under subsection 4 that a person has been refused employment, discharged, discriminated against, threatened, coerced, intimidated or otherwise dealt with contrary to this Act as to his employment, opportunity for employment or conditions of employment, the burden of proof that any employer or employers' organization did not act contrary to this Act lies upon the employer or employers' organization."

6. The Board has long held that in complaints such as this anti union motivation does not have to be the sole reason or even the predominant reason for the activity complained of for the Board to find that the Act has been breached. A recent decision of the Ontario High Court in considering the comparable section of the Canada Labour Code upheld this interpretation.

"In considering an enactment devoid of the words, "sole reason," or "for the reason only" and resting only on the word "because", the Court must take an expanded view of its application. If the evidence satisfies it beyond a reasonable doubt that membership in a trade union was present to the mind of the employer in his decision to dismiss, either as a main reason or one incidental to it, or as one of many reasons regardless of priority, s. 110(3) of the Canada Labour Code has been transgressed."

See the *Bushnell* case (1974) OR at page 442. This decision was upheld in a decision of the Court of Appeal dated April 4, 1974 and found at 4 OR (2d) 288.

7. The effect of the reversal of onus places a burden on the respondent to put forward a credible explanation free from anti union motive which is established on the balance of probabilities as the only reason or reasons giving rise to the alleged unlawful activity. (See *Barrie Examiner* case [1975] OLRB Rep. Oct. 745 and *Corporation of the City of London* case [1976] OLRB Rep. Jan. 990). Whereas prior to the reversal of the legal burden a complainant had to establish either directly or by inference that the respondent employer had knowledge of trade union activity, it is now incumbent on the respondent to prove, on the balance of probabilities, that it either did not have knowledge of trade union activity and therefore could not have been motivated by it or that in spite of its knowledge it acted without anti union motive.

8. The explanation for the lay-off and subsequent termination of the complainant as put forward by the respondent must be assessed firstly, in light of Mr. N. Couteau's reaction upon learning of the trade union activity of his employees and secondly, in light of the fact that Mr. Dubois had never been laid off previous to this time. Mr. Couteau's reaction to the application for certification was one of obvious upset and displeasure. He gave the employees three days to change their minds and attempted to determine who their leader was. The complainant has established to the satisfaction of the Board that he was the prime mover in the attempt by the employees of the respondent to unionize. (See *F.W. Woolworth* case, Board File 1291-75-U March 16, 1976). Notwithstanding Mr. Couteau's evidence that he did not find out that Mr. Dubois was the prime mover or leader until some time in March, 1975, his evidence conflicts with that of Mr. Proulx whose evidence the Board finds to be more consistent with the tone of Mr. Couteau's inquiries upon learning of the application for certification. Mr. Proulx testified that Mr. Couteau said to him prior to the lay-off of Mr. Dubois, "you had to pick a stupid guy like Roger to be your leader." The Board accepts Mr. Proulx's evidence in this regard and finds, therefore, that Mr. Couteau was aware of Mr. Dubois' role in the unionization of the employees of the respondent prior to the time that Mr. Dubois was laid off on February 19, 1975. The Board in assessing the explanation put forward by the respondent must be mindful of the coincidence of Mr. Dubois' lay-off following so closely upon the respondent's notice of the application for certification and its awareness of Mr. Dubois' role in that process. Mr. Dubois had never been laid off in 31 months of employment with the respondent. He was by all accounts a versatile and willing worker who was acknowledged by Mr. N. Couteau to be "a Jack of all trades". His lay-off, therefore, following so closely upon the respondent's awareness of the filing of the application and of Mr. Dubois' involvement, is at best a coincidence which must be reasonably and credibly explained if the respondent is to meet the onus which falls to it.

9. The explanation of the respondent with respect to the lay-off of Mr. Dubois is in essence one of lack of work occasioned by a seasonal downturn. Mr. Couteau testified and provided sales figures to justify the lay-off of the four helpers who were in the employ of the company in February of 1975. Although the respondent had not had a lay-off of this extent in the past, Mr. Couteau referred to the sharp percentage drop in sales volume from January to February of 1975 as justifying the lay-off of the four helpers. It was his evidence that the company has regard to service in laying-off helpers but that this consideration does not extend to retaining a helper in preference to a tradesman. The Board accepts that the sign business is a cyclical one with a seasonal downturn in mid-Winter which, on occasion, has

precipitated the lay-off of employees. The Board further accepts that there was such a downturn in mid-Winter 1975 which necessitated the lay-off of the three helpers, Messrs. Demers, White and Lacourcier. The Board finds, however, that the lay-off of Mr. Dubois was at least in part motivated by his trade union activity.

10. The explanation of the respondent company as it relates to the lay-off of Mr. Dubois does not overcome in the mind of the Board the extreme coincidence of Mr. Dubois' lay-off as referred to in paragraph 8. *Firstly*, the Board is not convinced that the percentage decline in business actively from January to February, 1975, necessarily required the lay-off of Mr. Dubois. Mr. Dubois had worked during February of 1973 when sales volume stood at \$13,900 and similarly he had worked during February of 1974 when sales volume stood at \$12,800. The Board is not convinced that the respondent was required to lay-off the complainant for business reasons when sales volume stood at \$19,500. Surely absolute sales volume and not the percentage decline from the previous month would determine whether the respondent would have to lay-off an employee with Mr. Dubois' service. *Secondly*, having regard to the respondent's admitted attention to service as a factor in determining the order of lay-off, the Board views with skepticism the retention of Mr. Rick Couteau, an employee with approximately eight months of service, who Mr. Gaston Limieux, a former tradesman in the employ of the respondent company, referred to as a helper at the time of the lay-off and who Mr. N. Couteau admitted in cross-examination (to his reply evidence) was just about to graduate from helper to serviceman. The Board does not accept that business reasons would dictate the lay-off of a "Jack of all trades" (admittedly classified as a helper) with 31 months of service in preference to an employee with eight months of service who is just about to graduate from the helper classification. The Board is not about to allow Mr. Dubois to be entrapped by his versatility as an employee. Having examined the explanation of the respondent in the light of the extreme coincidence of the lay-off of Mr. Dubois the board by a process of inferential reasoning concludes that his lay-off was at least in part motivated by his trade union activity.

5. The Board finds that the lay-off and subsequent termination of Mr. Dubois to be a violation of section 58(a) of The Labour Relations Act and directs that Mr. Dubois be reinstated into his former employ and that he be compensated for all real losses suffered as a result of his lay-off and subsequent termination up to the time he is offered reinstatement. The Board will remain seized of this matter in the event the parties are unable to agree on the exact amount of compensation.

0003-76-U D.L. Noble, Arnold Marsman and Arthur Dix, (Complainants)
v. Wm. Sidell, Wm. Stefanovitch and T.G. Harkness, (Respondents).

Trusteeship – S73(2) – Whether supervisors in violation of earlier Board decision not to allow extension of trusteeship.

BEFORE: Rory F. Egan, Acting Chairman, and Board Members J.D. Bell and R. White.

APPEARANCES: D.L. Noble, A.H. Marsman and Arthur Dix for the complainants; L. MacLean, W. Stefanovitch and T.G. Harkness for the respondents.

DECISION OF THE BOARD: Apr. 22, 1976

1. This is an application under section 79 of The Labour Relations Act in which it is alleged that the respondents have dealt with the complainants contrary to the provisions of section 73(2) of the Act.

2. The complaint is that the respondents have failed to comply with a decision of the Board dated February 17, 1976. That decision was made with respect to an application under section 73(2) of the Act by United Brotherhood of Carpenters and Joiners of America for consent of the Board to the continuation of a trusteeship which that union had instituted over Local Union 1946 of United Brotherhood of Carpenters and Joiners of America. Section 73(2) provides:

(2) Where a provincial, national or international trade union has assumed supervision or control over a subordinate trade union, such supervision or control shall not continue for more than twelve months from the date of such assumption, but such supervision or control may be continued for a further period of twelve months with the consent of the Board.

The complainants herein are members of Local 1946. The respondents, Sidell, Stefanovitch and Harkness, are, respectively, the General President of the United Brotherhood, a General Executive Board Member and Representative of the United Brotherhood. Stefanovitch was appointed supervisor and Harkness his assistant supervisor of the trusteeship.

3. The Board, in its decision of February 17, 1976, dismissed the application for continuation of the supervision.

4. It is the position of the complainants that the supervision has not been handed over to the local and that the respondents are, therefore, in violation of section 73(2) and are, in effect, refusing to comply with the decision of the Board by continuing the supervision.

5. The complainants alleged that the supervisors continued to use that title in various notices subsequent to the date of the decision of the Board; that the supervisors paid expenditures subsequent to the decision and that they failed to comply with the written request of the requisite number of members in good standing for a special call meeting for the purpose of filling vacancies in the local executive. This request was made on February 20, 1976.

6. It is understandable that business commenced during the trusteeship should be concluded in a proper manner but in a reasonable time during a transitional period between the cessation of the supervision or trusteeship and the return of matters to the local. The accounts and other business concerning which the complaint was made appear, on the evidence, to relate to matters which arose prior to the decision but which were not fully concluded at that time.

7. A meeting was eventually held on April 4, 1976. The complainants state that there was undue delay in calling this meeting and that in any event it did not accomplish the purpose for which they sought a meeting. Notwithstanding the explanations advanced by

the respondents as to why the meeting was not held sooner, the Board is of the opinion that the time lag was unreasonable. However, at the meeting the members were informed that the trusteeship or supervision had been terminated; that regular meetings of the local would be immediately resumed and that elections would be held in accordance with the provisions of the constitution. All of these statements were reaffirmed by Stefanovitch at the hearing. The nominations are to be in May, the elections in June and the installation of officers in July. It is to be noted that while the intent to hold the elections in the manner set out above was reiterated at the hearing, no arrangements had been made at that date for a nominations meeting in May. The Board would point out that delay in executing the expressed intent might very well be construed, in the absence of an acceptable explanation, to be an attempt to avoid the consequences of the Board's decision of February 17, 1976. Those responsible for the conduct of the matter must, therefore, proceed with deliberate speed to comply with the relevant provisions of the Act.

8. In the result, the Board finds on the evidence that the respondents are not in violation of section 73(2) of the Act and the complaint is accordingly dismissed.

1789-75-U John deP. Wright, (Applicant), v. Clarence Dungey, (Respondent).

Consent to Prosecute – S90(2) – whether the Act allows a ‘private citizen’ to apply for consent to prosecute – Whether the Board will grant consent to a ‘private citizen’.

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members D. G. Archer and J. E. C. Robinson, Q.C.

APPEARANCES: *J. Wright for the applicant; M. Hikl, C. Dungey, A. O'Connor and C. Edwards for the respondent.*

DECISION OF FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBER D. B. ARCHER. April 12, 1976

1. This is an application for consent to institute a prosecution against the respondent Clarence Dungey, an officer of the Canadian Union of Public Employees, wherein it is alleged that he threatened the applicant during the course of a telephone conversation on February 27, 1976, to the effect that Local Number 1880 of the Canadian Union of Public Employees, (hereinafter referred to as the Union), would engage in an unlawful strike against the Children's Aid Society of Sault Ste. Marie and District of Algoma (hereinafter referred to as the Society), contrary to the provisions of the Labour Relations Act.

2. At the outset of these proceedings, the respondent challenged the status of the applicant to maintain this application. In this respect, the representations of Mr. Wright, the applicant herein, are to the effect that although he presently occupies the office of President in the Society, he is nevertheless engaged full-time in the general practice of law in the City of Sault Ste. Marie. He has not sought nor has he received the authority of the Society to ap-

pear on its behalf as the employer in connection with this application. Simply put, it is Mr. Wright's submission that in the circumstances he is entitled to launch this application in his own right as a private or ordinary citizen.

3. The governing legislation in this respect is Section 90(2) of the Act, which provides in part as follows:

“An application for consent to institute a prosecution for an offence under the Act may be made *inter alia* by a trade union, a council of trade unions, a corporation or an employers' organization. . . .”

The term *inter alia* is defined simply in *Mozley and Whitely's Law Dictionary* (Sixth Edition) at page 179, as “Amongst other things”.

4. In the *Wood, Wire and Metal Lathers' International Union Local 562, Kenneth Weller and Gus Simone* case [1972] OLRB Rep. 159, the Board, at page 160, stated as follows:

“In our opinion the application for consent to prosecute differs from other matters before this Board in that the application is of a public nature rather than a private one. As such, there is a public interest in an application for consent to prosecute which does not obtain in other matters, and accordingly we are of the opinion that we should not adopt a restricted or limited view of the persons who are able to bring the application.

If this application was successful the applicant would be required to subsequently appear before a Justice of the Peace and swear an information pursuant to the procedures contained in Part XXIV of The Criminal Code concerning summary convictions. In that part under section 692 an informant “means a person who lays an information”. That definition gives considerable flexibility as to who may bring a matter of public concern before the courts. Under most Provincial Acts matters proceed directly to the courts upon the laying of information. However, under The Labour Relations Act the consent of this Board is interposed prior to the laying of an information and we do not see why that procedural step alone should limit persons who may bring quasi criminal or penal matters to the attention of the summary conviction court. We note that in an appropriate case the relationship of the applicant to the situation may be a factor in the granting of consent as a matter of discretion.”

5. Having regard therefore to the relevant legislation and to the authorities above cited, the Board confirms its oral decision rendered at the hearing of this matter on March 17, 1976, granting status to Mr. Wright to bring this application.

6. Having regard to the evidence and the representations of the parties thereto, we are satisfied that the applicant has made out a *prima facie* case on the merits and that there are arguable questions of fact and law which could properly be determined by the Provincial Court. The question now arises, however, as to whether the Board, in the exercise of its discretion, should nevertheless deny its consent, having regard to all of the circumstances.

7. An analogous situation confronted the Board in the *King Shopping Plaza (London) Limited* case OLRB M.R. May, 1963, p.116, where the applicant sought consent to institute a prosecution against an officer of a trade union for the alleged offence of "counselling" an unlawful strike pursuant to Section 55 (now as amended in 1970, Section 65) of the former provisions of the Act. The essential facts in that case as set out at page 116, are as follows:

"At all time material to this application, the applicant company was engaged on a construction project at London. The carpenters and labourers employed on this project were employees of the applicant while the employees engaged on plumbing in connection with the project were employees of William S. Salmon Limited, the plumbing sub-contractor employed on the project by the applicant."

The Board continues:

"If we assume for present purposes, but without making a finding to that effect, that an unlawful strike occurred in the circumstances of this case, it is clear that any persons who engaged in such unlawful strike were not employees of the applicant but were employees of its sub-contractor, William S. Salmon Limited.

The granting or withholding of consent to institute a prosecution under section 74(1) (now Section 95) of The Labour Relations Act is a matter of discretion for the Board. In cases where consent to prosecute involves an unlawful strike, the Board, in exercising its discretion in favour of granting its consent, should generally look for an employment relationship between the applicant and the persons who engaged in the unlawful strike with a view to granting relief to an applicant whose employment relationship has been disrupted by the strike. In this case there is no employment relationship between the applicant and the employees of William S. Salmon Limited and it is significant to note that no complaint has been made by William S. Salmon Limited about the conduct of its employees or about the conduct of the respondent. In the circumstances, the Board is not prepared to give its consent to the institution of a prosecution of the respondent by the applicant."

8. In our opinion, the principles as set out in the *King Shopping Plaza (London) Limited* case (supra) with respect to the "counselling" of an unlawful strike, should apply equally to the "threat" of an unlawful strike as incorporated in the amendments to the Act in 1970, and as now contained in the present provision of Section 65 of the Act. In the absence therefore, firstly of the existence of any employment relationship between Mr. Wright while acting in his personal capacity, and the employees of the Society as encompassed in the bargaining unit defined in the collective agreement between the Union and the Society (Exhibit # 1), and secondly, in the absence of any intervention filed by the Society in these proceedings, we are not prepared in the exercise of our discretion, to grant our consent in the particular circumstances of this case, for this matter (which essentially resolves itself into a personality conflict between the parties) to progress further to the Provincial Courts.

9. The application is accordingly dismissed.

DECISION OF BOARD MEMBER J. E. C. ROBINSON, Q.C.

I am in agreement with paragraphs 1-6 inclusive of the majority decision, and, in particular with that portion of the majority decision wherein the finding is made that the applicant "has made out a *prima facie* case on the merits and that there are arguable questions of fact and law which could properly be determined by the Provincial Court".

I am not in agreement with the majority, however, in its exercise of the Board's discretion and in failing to issue a consent to institute a prosecution against the respondent, Clarence Dungey.

Nor am I in agreement that the *King Shopping Plaza (London) Limited* case OLRB M.R. May, 1963, p.116, is an analogous situation to that in the instant case.

The section which the applicant alleges has been violated is section 65 of The Labour Relations Act.

Section 65 states:

"No trade union or council of trade unions shall call or authorize or threaten to call or authorize an unlawful strike and no officer, official or agent of a trade union or council of trade unions shall counsel, procure, support or encourage an unlawful strike or threaten an unlawful strike."

There is little doubt on the evidence that the respondent is an officer of the trade union with whom the Children's Aid Society of Sault Ste. Marie and District of Algoma was bound by a collective agreement. There is also little doubt that such collective agreement was arrived at after protracted negotiations together with an ensuing strike. The President of the Children's Aid Society of Sault Ste. Marie and District of Algoma is the applicant herein.

While the applicant herein, may well have appeared before us as a private citizen, I would find that the alleged threats made to him by the respondent in violation of section 65 of The Labour Relations Act were made to the applicant in his capacity as President of the Children's Aid Society.

Indeed the evidence discloses that the very application which we are here considering was discussed by the applicant, the respondent, and members of the Society at a meeting of such Children's Aid Society.

The alleged threat having been made against the applicant, qua President of the Society, I find little merit in withholding the consent to the institution of a prosecution merely because the applicant advanced his case as a private citizen, rather than as the President of the Society.

Accordingly, I would grant consent to the institution of a prosecution against the respondent for the alleged violation of section 65 of The Labour Relations Act.

1667-75-R Ontario Taxi Association, (Applicant), v. Seven-Eleven Taxi Ltd., (Respondent).

Employees – Dependent Contractors – S1(1)(ga) – Whether taxi owners dependent contractors – Whether economic relationship more closely resembles employee than independent contractor.

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members H. J. F. Ade and P. J. O’Keeffe.

APPEARANCES: *Larry Woodcox for the applicant; no one appeared for the respondent.*

DECISION OF THE BOARD: April 26, 1976

1. Having regard to all of the evidence as adduced in these proceedings, the Board is satisfied that the applicant has established its status in order to qualify as a “trade union” within the meaning of Section 1(1)(n) of *The Labour Relations Act*.
2. Following the initial hearing of this matter on March 1, 1976, Mr. A. A. Morrow, Labour Relations Officer, was authorized by the Board to inquire into the employment relationship, if any, existing between the respondent and the persons subject to this application.
3. The applicant in these proceedings is seeking to represent a bargaining unit consisting of “all taxi drivers working for the respondent in and out of the city of Mississauga”, with certain exclusions not material herein. The list of “employees” as subsequently filed by the respondent in this regard, contains the names of 43 persons. Of these 43 persons, four, namely K. L. Charara, R. E. Reece, A. Hajjar and L. Woodcox are listed by the respondent (and hereinafter referred to) as “Drivers”. The remaining persons shown on the respondent’s list are classified (and hereinafter referred to) as “Owners”. It is with respect to the employment relationship of these Owners that an issue now arises between the parties, and more particularly, whether these persons qualify as “dependent contractors” within the meaning of the said Act.
4. The relevant legislation in this respect is found in Section 1 of the definition provisions of the Act, which provides as follows:

“(ga) “dependent contractor” means a person, whether or not employed under a contract of employment, and whether or not furnishing his own tools, vehicles, equipment, machinery, material, or any other thing, who performs work or services for another person for compensation or reward on such terms and conditions that he is in a position of economic dependence upon, and under an obligation to perform duties for, that person more closely resembling the relationship of an employee than that of an independent contractor;

(gb) “employee” includes a dependent contractor.”

This application represents a case of first impression before this Board with respect to this legislation which was not proclaimed in force until January 1, 1976.

5. The evidence as gleaned from the report of Mr. A. A. Morrow, Labour Relations Officer, establishes that in direct contrast to its Drivers to whom the respondent leases certain of its vehicles upon a weekly basis, the respondent does not lease any of its own vehicles to the Owners, rather, each Owner supplies his vehicle to the venture. In this regard, the respondent assumes no responsibility (as it does in the case of its Drivers) for the payment on behalf of these persons of any Unemployment Insurance, Workmen's Compensation or other work-related benefits.

6. The testimony of Mr. Adam Scinocco concerning his duties and responsibilities in the capacity of an Owner is representative of the 39 individuals falling within this category. His evidence is to the effect that while he owns the vehicle and the meter, he rents the radio personally from Mr. Murray Diab, the owner and president of the respondent. In addition, the respondent on the payment of a "\$40 or \$50 retainer", supplies Mr. Scinocco with a light roof sign bearing the respondent's name. This sign is not permanently affixed to his vehicle and is easily removable and the retainer monies are refundable upon Mr. Scinocco returning the sign. When Mr. Scinocco was asked by Mr. Morrow to describe his "arrangement" with the respondent, the following conversation transpired between them:

"Seven-eleven Taxi is a brokerage. The arrangements that we have with Seven-eleven is that you pay fees into the brokerage for services, a set amount of fees for the service which they will give you.

And what services do they provide you for this fee?

They provide air service to the pick-up customers and to take them from one point to another point, this is all the services they give.

Are you able to pick-up passengers on your own aside from the ones that are dispatched to you through the radio?

Yes, of course.

What percentage of your business would be obtained through the radio and through just picking up?

Well, I would say that through the brokerage you would get the biggest percentage of your business, if you played your radio continuously. It would have to come through your brokerage definitely. Your pick-up on the street would be minimal.

And the fee that you pay for this service from the brokerage, is this a set fee?

It is a set fee by the brokerage.

It is not based on the amount of business you may do?

No, it isn't, at the present time, no."

7. Mr. Scinocco further testified that he alone is responsible for payment of the insurance, licences and repairs associated with his vehicle. There is no prescribed amount of

hours that he is required to work the cab as this matter is left entirely to his discretion. He pays to the respondent a set monthly rate of \$150 regardless of the hours worked. There is no formal contract between Mr. Scinocco and the respondent, and each party can terminate the relationship at any time. When initially asked if he could refuse a dispatch assigned to him over the radio, Mr. Scinocco stated that he would be penalized by the respondent for refusing to take a "proper legal fare". If such activities were substantiated at a hearing, it could result in his being "suspended for three days off the air". However, this would not prevent him from nevertheless waiting in a line-up or otherwise securing fares off the street during this period. On further questioning, Mr. Scinocco indicated that he was not required to "book on the air" and notify the dispatcher that he was available for work, but that he could, within his own discretion, decide to work the streets or any other location. The obligation to take the fare, he stated, only occurs at the moment he books on the air when he advises the dispatcher of his availability. However, according to Mr. Scinocco, even in such a situation, there may nevertheless be a "legite reason" for refusing the fare, and which would therefore not attract the penalty.

8. The question therefore before the Board resolves itself into determining in these particular circumstances, whether Mr. Scinocco is in a position of economic dependence upon, and under an obligation to perform duties for the respondent more closely resembling the relationship of an employee than that of an independent contractor, in the manner as contemplated by the above quoted legislation.

9. Having carefully reviewed the totality of the evidence, we cannot conclude that Mr. Scinocco is, with respect to the respondent, in a position of "economic dependence" within the meaning of Section 1(ga) of the Act. What we do find, however, is that he secures the majority of his fares by means of an informal arrangement entered into with the respondent, whereby for a fixed monthly fee of \$150.00, Mr. Scinocco is supplied with certain radio dispatching services as provided by the respondent. In the particular circumstances, as set out above, we find that his duties in this respect resemble more closely those of an independent contractor rather than those of an employee. In like manner, we cannot conclude having regard to the particular circumstances as set out in Paragraph #7 herein, that Mr. Scinocco is under any "obligation" to perform his duties on behalf of the respondent in the manner as contemplated under the provision of Section 1(ga) of the Act. In reaching these conclusions, the Board has reviewed the decision of the British Columbia Labour Relations Board in *Fowness Construction Co. Ltd.* [1974] 1 Canadian LRBR 453, and we have had occasion to review the authorities as cited therein with respect to legislation which is essentially similar to the recent Ontario enactment. Although, there would appear to be no analogous legislation under the *National Labour Relations Act* (that legislation deals with the exclusion of independent contractors from the definition provisions of "employer") we have also considered the tests as set out in the American jurisprudence. (See for example *SIDA of Hawaii Inc.* (1975) 76 L.C. 10, 722; *Barwood, Inc.* C.C.H. N.L.R.B. 26, 218; *Columbus Green Cabs* (1974) C.C.H. N.L.R.B. 15, 182; *Checker Cabs Association Inc.* (1970) C.C.H. N.L.R.B. 22, 279; and *Trade Wind Transportation* (1970) C.C.H. N.L.R.B. 22, 300.

10. In the result, the Board concludes, in the particular circumstances as set out above, that the Owners are not "dependent contractors" within the meaning of the Act.

11. Having regard to the foregoing, and even assuming that, for our purposes, the four remaining Drivers are employees within the meaning of the Act, it would nevertheless

appear that the applicant's membership position with respect to any bargaining unit which may be found to be appropriate by the Board, would, in any event, fall below the 45% requirement as set out in Section 7(2) of the Act.

12. In these circumstances, this application is accordingly dismissed.

1807-75-R United Electrical, Radio and Machine Workers of America (UE), (Applicant), v. **Neo Industries Limited**, (Respondent), v. Oil & Gas Technicians, Service, Domestic and General Workers Union, Local 1267, (Intervener).

Certification – Build-Up – S5(2) – Whether previous certification of intervener a bar to application – Whether earlier certificate obtained by fraud – Whether failure to disclose a pending build up or to list as possibly affected by an application a union with representation rights at other plants constitutes a fraud.

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members H. J. F. Ade and E. Boyer.

APPEARANCES: *R. Russell, S. Farkas and D. Barry for the applicant; D. L. Brisbin for the respondent; A. M. Minsky and J. R. McPherson for the intervener.*

DECISION OF FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBER H. J. F. ADE., April 27, 1976.

1. This is an application for certification requesting the taking of a pre-hearing representation vote wherein the applicant (hereinafter referred to as "the U.E.") seeks to represent an "all-employee" bargaining unit at or out of the respondent's factory at the town of Stoney Creek, subject to certain exceptions not relevant herein. Upon entertaining the written representations of the respondent and the intervener trade union, the majority of the Board directed that the vote be taken and that the ballot box be sealed pending the further direction of the Board. The vote was conducted on April 8, 1976, and on April 9, at a formal hearing conducted before the Board, we entertained the representations of the parties.

2. At the commencement of the hearing of this matter, both the respondent and the intervener trade union raised a preliminary issue concerning the timeliness of this application. In this respect, it was alleged that a certificate had been previously issued by another division of this Board in the *Neo Industries Limited* case (Board File No. 0712-75-R) with respect to the employees subject to the instant application, pursuant to the decision of the Board in that matter dated August 26, 1975. It was the submission of both the respondent and the intervener trade union that such a certificate constituted, in the circumstances, a bar to the institution of the proceedings presently before us.

3. It is not in dispute that subsequent to the release of the aforementioned decision dated August 26, 1975, the U.E. formally requested that division of the Board to review its

decision on the basis of the allegation that the certificate was obtained by fraud. In the subsequent "show cause" hearing, the U.E. took the position that its status to intervene in this regard was based upon it being the trade union party to a collective agreement with respect to certain of the respondent's employees engaged in Hamilton. Although the Board in those proceedings permitted the parties to adduce evidence with respect to the U.E.'s allegations of fraud, the decision of Acting Chairman Egan and Board Member Bell dated March 18, 1976, in Board File No. 0712-75-R, had made no reference to such evidence and, for the reasons as set out therein, the majority simply denied the U.E.'s request for reconsideration on the basis that "the U.E. is a stranger to the proceedings and has no status to raise or argue the issues which it has attempted to place before the Board". Board Member Hodges wrote a separate decision dated March 15, 1976, wherein he concurred with the decision of his colleagues to the effect that "the U.E. was without status to intervene in the application for certification". However, Board Member Hodges in his decision then proceeded to remark upon the evidence as adduced with respect to the U.E.'s allegation of fraud, whereupon, for the reasons as set out therein, he concluded that he would have revoked the certificate which had been issued in those prior proceedings.

4. The first issue before us is to determine therefore what effect, if any, is to be given in the present proceedings before us to the remarks of Board Member Hodges in the circumstances as set out above. In this regard, we find the provisions of Section 91(11) of The Labour Relations Act relevant, and which provide as follows:

"The decision of the majority of the members of the Board present and constituting a quorum is the decision of the Board, but if there is no majority, the decision of the chairman or vice-chairman governs."

In our opinion, this subsection, in situations where there is a lack of unanimity amongst its members, recognizes only two types of Board decisions, viz. "the decision of the majority", and where there is no such majority, then "the decision of the chairman or vice-chairman". In the circumstances of this case, we are therefore satisfied that the remarks of Board Member Hodges following his concurrence with the majority with respect to the U.E.'s lack of status, would not constitute a "decision of the Board" upon which the doctrine of *Res Judicata* may be invoked. At best, we find his remarks to constitute "obiter", and accordingly, we are not prepared to consider them in assessing the particular evidence which was tendered before us in the instant case.

5. Prior to the release of the aforementioned decision dated March 18, 1976, in Board File No. 0712-75-R, the U.E. on March 10, 1976, filed the instant application. In reply to the preliminary objections concerning the timeliness of the application, as raised at the hearing before us, Mr. Russell, on behalf of the U.E., alluded to the question of fraud although no formal charges as such were filed in these proceedings. It was Mr. Russell's submission at this time, that he should nevertheless be permitted to elicit all relevant evidence with respect to the timeliness issue, and "let the Board be the judge" of the effect to be given to such evidence. Upon hearing the representations of the parties, the majority of the Board (Board Member Ade dissenting) ruled that Mr. Russell was entitled in the circumstances to adduce all relevant evidence in support of his position regarding the timeliness of the application.

6. The sole testimony before us in these proceedings was adduced through Mr. W. Castledine, the respondent's Vice-President of Manufacturing, who was subpoenaed *duces tecum* by the applicant. His evidence is to the effect that he was in charge of the Stoney Creek plant since its inception, and that it was he who interviewed and hired Messrs. B. Neary and D. Ryan to work therein commencing on August 5, 1975. These were the two employees on whose behalf the intervener trade union had previously sought and subsequently obtained bargaining rights pursuant to its application in Board File No. 0712-75-R, filed with the Board on August 5, 1975.

7. Mr. Castledine testified that Ryan was hired in the capacity of a mechanical electrician and that he left the employ of the company on September 5, 1975. Neary, who was hired in the capacity of a labourer, ceased employment with the company on August 29, 1975. No other employees were hired at the Stoney Creek plant until September 8, 1975. The specific nature of the work to be performed at this plant consisted in what Mr. Castledine described as "industrial chrome plating plus a certain amount of machining." Although the physical construction of the plant was substantially completed by August 1, 1975, he stated that it was not "energized" at this time. In this regard, Mr. Castledine explained that on May 28, 1975, a temporary 220 – voltage service had been installed. Although this amount of voltage produced sufficient power to operate the power tools utilized in the installation of certain production machinery in the plant, it was inadequate for plating purposes until the installation therein of the permanent 550 – voltage service on September 3, 1975. Accordingly, he conceded that there was no production in the plant prior to this date and that Ryan's tasks, as assisted by Neary at this time, consisted solely in the installation of machinery in the plant. Mr. Russell however conceded that after September 3, 1975, and prior to his termination of employment on September 5, 1975, Ryan was engaged in production work. On cross-examination, Mr. Castledine did state that prior to any plating production taking place, associated warehousing and stock-piling functions would have to be performed by the hourly rated employees. Mr. Castledine denied that any of the employees were ever physically engaged in the actual construction of the building.

8. In compliance with the request as contained in the subpoena issued to him at the behest of the applicant, Mr. Castledine brought with him to the hearing certain documents which revealed, *inter alia*, that since the commencement of production at the Stoney Creek plant, 16 additional employees have been hired. Of this number, 3 have since left the company and 5 employees were "changed over" to the new plant from the Hamilton operations. To the best of Mr. Castledine's knowledge this "change-over" was performed upon the specific request of these employees. In so moving, he further stated that these employees lost their accumulated seniority benefits accruing to them at the Hamilton plant and that they were therefore required to accept date of entry seniority upon being hired into the Stoney Creek plant.

9. It is the position of both counsel for the respondent and the intervener trade union that the instant application is untimely, having regard to the provisions of Section 5(2) of the Act, the relevant portions of which provide that"

"Where a trade union has been certified as bargaining agent of the employees of an employer in a bargaining unit and has not entered into a collective agreement with the employer and no declaration has been made by the Board that the trade union may . . . apply to the Board for

certification as bargaining agent of any of the employees in the bargaining unit determined in the certificate only after the expiration of one year from the date of the certification.”

10. Mr. Russell, on the other hand, maintained that the certification of the intervener trade union in Board File No. 0712-75-R was issued in error in that Mr. Edwin L. Stringer, the respondent's lawyer and an experienced counsel in labour relations matters coming before the Board, failed to reveal in his filings with the Board in those proceedings, that the plant was in a “build-up” situation and that the U.E. as a trade union might be affected. In all of the circumstances, Mr. Russell alleges that the certificate was obtained by fraud and that, having regard to the provisions of Section 50 of the Act, it should not act as a bar to this application.

11. Having regard to the principles as set out by the Ontario High Court in *Genaire Ltd. v. International Association of Machinists and Ontario Labour Relations Board* (1958) 14 D.L.R. (2d) 201 [as affirmed by the Ontario Court of Appeal (1959) 18 D.L.R. (2d) (1959)], we have no hesitation in concluding that the “declaration” remedy as set out in Section 50 of the Act is applicable to proceedings of this type, namely, with respect to applications requesting the taking of a pre-hearing representation vote. The question we must now determine is whether or not the conduct of the respondent as outlined above constitutes fraud within the meaning of Section 50 of the Act.

12. In the *L'Abbe Construction Limited* case [1971] OLRB Rep. March 141, the Board reviewed the leading authorities concerning the requirements to establish fraud at common law and the circumstances under which the courts will set aside judgements. In the instant case, it is to be noted that the respondent's plant was not located in the same geographic area in which the U.E. possessed its bargaining rights. It is a matter of public record, that on June 18, 1974, there was filed with the Research Branch of the Ministry of Labour, an amended collective agreement entered into with the U.E. for an all-employee bargaining unit in Hamilton. The employer parties to that collective agreement are shown as Neo Chrome Limited, Neo Machine Limited and Neo Engraving Limited. Further, employees who requested to be transferred to the Stoney Creek plant from the Hamilton operations were in effect hired there as new employees. In these circumstances, and in the absence of any evidence relating to collusion on the part of the respondent and the intervener trade union in this matter, we are not prepared, having regard to the totality of the evidence, and on the basis of the jurisprudence as set out in the *L'Abbe Construction Limited* case (supra), to find fraud on the part of the respondent simply because it had failed to show in its Form 9 Reply filed with the Board, either that the U.E. may be a trade union affected by that application, or that a “build-up” of employees at Stoney Creek was imminent. The Board is not prepared to “speculate” in these areas and we find that the applicant has failed, on the balance of probabilities to establish that the respondent's actions amounted to fraud upon the Board within the meaning of Section 50 of the Act.

13. In the result, we find that certificate as initially issued by the Board on August 26, 1975, in Board File No. 0712-75-R, constitutes an effective bar to this application.

14. Accordingly, the application is dismissed.

15. The Registrar is therefore directed to unseal the ballot box and to destroy the ballots cast in the pre-hearing representation vote taken in this matter following the expiration of 30 days from the date of this decision unless a statement requesting that the ballots should not be destroyed is received by the Board from one of the parties before the expiration of such 30 day period.

DECISION OF BOARD MEMBER E. BOYER.

1. Having regard, solely to the evidence that was presented before me in the instant case, the applicant, in my opinion, failed to adduce sufficient evidence to establish fraud within the meaning of Section 50 of the Act.

2. However, I have carefully reviewed the decisions of the Board in Board File No. 0712-75-R, dated March 15, 1976, and in particular the decision of Board Member Hodges.

3. In my opinion, had the same evidence as recorded in Board Member Hodges' decision been presented before me, along with the evidence that I heard, I would have had no hesitation in concluding that a fraud had been perpetuated upon this Board.

0702-75-R Retail Clerks International Association, (Applicant), v. Haviland Drug Limited, (Respondent).

Certification – Pharmacists – Whether pharmacists employed at Drug Stores excluded as managerial – S1(3)(b).

BEFORE: R. A. Furness, Vice-Chairman, and Board Members J. D. Bell and E. Boyer.

APPEARANCES: *Rick Sjoerds and C. Paliare appearing for the applicant; R. A. Werry, Harvey Cohen and Edward White appearing for the respondent.*

DECISION OF THE BOARD: April 27, 1976

3. The respondent has three divisions, namely, Banner Pharmacies, Sutton Place Pharmacy and Global Drug Mart. Banner Pharmacies operates stores in Metropolitan Toronto at 3018 Don Mills Road and at 5801 Yonge Street. Sutton Place Pharmacy operates one store in Metropolitan Toronto at 967 Bay Street. Global Drug Mart operates one store in Metropolitan Toronto at 2703 Jane Street. All of these four stores are affected by this application which applies to six pharmacists who are employed at these locations.

4. At the initial hearing in this matter the respondent alleged that each of these six pharmacists exercised managerial functions. A labour relations officer was appointed to inquire into and report to the Board, *inter alia*, on the nature of the work and the duties and responsibilities of the persons who are affected by this application.

5. The Board has considered the report of the labour relations officer and the representations of the parties.

6. Mr. Parkin is a pharmacist and the manager of the store at 5801 Yonge Street. Another pharmacist, Mr. Acenberg, works in the same store. There is a total of ten employees in the store. In theory Mr. Parkin has control over all of them. However, he spends ninety-nine per cent of his time filling prescriptions and finds it necessary to delegate some of his responsibilities. He is responsible for ordering replacements in drug supplies. Mr. Parkin has dismissed two employees on his own initiative. One instance involved theft by an employee from the store and the other instance involved lying by an employee. On Mr. Parkin's instructions advertisements were placed in newspapers to obtain new staff and he effectively hired employees for the respondent. While he does not set the rates of pay, Mr. Parkin has recommended and obtained pay increases for other employees. In addition, employees who have complaints regarding their pay cheques come to him. While his discretion in purchasing drugs and other supplies for the respondent is restricted by a policy of centralized purchasing, Mr. Parkin does exercise a considerable degree of supervisory authority over the employees in the store. The Board finds that Mr. Parkin exercises managerial functions within the meaning of section 1(3)(b) of The Labour Relations Act.

7. Mr. Acenberg is a pharmacist in the same store as Mr. Parkin. Mr. Acenberg does not have employees under his control and he is supervised by Mr. Parkin. Mr. Acenberg is not responsible for the quantity or quality of the work done by any person and he spends ninety-nine per cent of his work filling prescriptions. He does not assign work and he does not train, discipline or assess the work of other employees. He does not hire or dismiss employees. When he was hired by the respondent no one informed him of his duties and responsibilities. The Board finds that Mr. Acenberg does not exercise any apparent independent discretion or supervisory duties with respect to his employment as a pharmacist. The Board finds that Mr. Acenberg does not exercise any managerial functions within the meaning of section 1(3)(b) of The Labour Relations Act.

8. Mr. Ferreira is a pharmacist and is the manager of the store at 3018 Don Mills Road. There is another pharmacist in this store and Mr. Ferreira assumes that the other pharmacist, Mr. Law, is the assistant manager. However, he admits that he might be incorrect in this assumption. The respondent's president, Mr. Cohen, has an assistant called Mrs. Briggs. Mr. Ferreira spends eighty-five to ninety per cent of his time filling prescriptions and is allowed to order limited quantities of drugs. Mr. Cohen places such bulk orders. Mr. Ferreira does not have the authority to order anything over a dozen and is restricted to "picking up the shorts and re-ordering". He is not permitted to buy "deals" and has to check constantly with Mr. Cohen. He does not have the authority to put anything "on sale". The girls who work in the store go first to Mr. Briggs with their questions and if she is busy they might approach Mr. Ferreira. While he would say that he is in charge of the store, he does not have the authority to hire employees and his concept of disciplining an employee who arrives late for work is to look at his watch and say, "You are late". A fair reading of the evidence respecting Mr. Ferreira establishes that he is not in charge of the store, and that the real authority over the respondent's employees and the decisions of a discretionary nature are exercised by Mr. Cohen and Mrs. Briggs.

9. There is some suggestion in the report that Mr. Ferreira has the power to dismiss employees. However, on one occasion he merely recommended to Mr. Cohen that an employee be dismissed. This resulted in the employee being dismissed some five months later. The Board concludes that the evidence before it does not establish that there was any relationship between Mr. Ferreira's recommendation and the dismissal of the employee. The re-

spondent hired a pharmacist and a delivery boy through Mr. Ferreira. However, it appears to the Board that he did this as an agent of Mr. Cohen and that he did not in fact hire either of them on the basis of his own discretion. Mr. Ferreira's discretion is severely restricted by the duties and responsibilities of Mr. Cohen and Mrs. Briggs. The Board finds that he does not exercise any managerial functions within the meaning of section 1(3)(b) of The Labour Relations Act.

10. Mr. Law is a pharmacist who is employed at the same store as Mr. Ferreira's assistant. He spends eighty to eighty-five per cent of his time filling prescriptions and is not responsible for the quality of anyone's work. He does not assign work to employees and does not believe he can take disciplinary action on his own initiative. Mr. Law does not evaluate employees, recommend wage increases or grant casual time off to employees. He plays no part in hiring or dismissing employees and if any employee is unable to commence work because of illness he tells Mrs. Briggs. The Board finds that Mr. Law does not exercise any independent discretion or supervisory power with respect to the other employees of the respondent. Accordingly, the Board finds that Mr. Law does not exercise any managerial functions within the meaning of section 1(3)(b) of The Labour Relations Act.

11. Mr. Brown is a pharmacist who is employed at 2703 Jane Street. His immediate supervisor is Mr. Cohen and he spends about a quarter of his time filling prescriptions. He makes out orders and unloads the orders from the truck. However, in most instances, except where he is replacing stock, Mr. Cohen has to verify the orders. Mr. Brown stated in his evidence that he is thought of as the person in control. However, he also stated that he can request certain things of the employees and "whether they do them or not, it depends". He does not train new employees and has not granted time off in an emergency. Mr. Brown is paid an hourly rate and neither hires nor dismisses employees. The Board finds that Mr. Brown does have some very limited supervisory authority over some of the respondent's employees. However, such authority has not been defined and his actual authority appears to be analogous to a working foreman in the construction industry, that is to say, he exercises responsibilities over and above his fellow employees while at the same time performing aspects of their work. Upon viewing the evidence as a whole, the Board finds that Mr. Brown's limited and supervisory authority exists at a very minor level. The Board finds that Mr. Brown does not exercise any managerial functions within the meaning of section 1(3)(b) of The Labour Relations Act.

12. Marion Dolmer is a pharmacist who is employed at 967 Bay Street. She spends about ten per cent of her time filling prescriptions. Also at the store is another pharmacist named Bernard Rubin. Mr. Rubin is the manager and his status is not the subject of any dispute between the parties. While Marion Dolmer does not order new drugs on her own she informs the wholesale house of the store's needs for the day. When she is not dispensing drugs she sells cosmetics, soaps and deodorants. She spends about half of her time selling other merchandise. Marion Dolmer does not train new employees, does not have access to confidential information and is not involved in scheduling work. She does not commit the respondent by requisitioning supplies apart from re-ordering drugs in refilling supplies. Although Marion Dolmer has no control over the employees she has granted casual time off to employees of the respondent and reports on the hours worked. However, she does not authorize overtime and is not involved in hiring new employees. In reading the evidence of Marion Dolmer the Board finds that she does not exercise any managerial functions within the meaning of section 1(3)(b) of The Labour Relations Act.

13. In the report of the Labour Relations Officer the parties agreed that the appropriate bargaining unit ought to be described in terms of "all pharmacists, pharmacists' interns and student pharmacists of the respondent in Metropolitan Toronto, save and except store manager, persons above the rank of store manager and persons regularly employed for not more than twenty-four hours per week". At the conclusion of the second hearing the Board pointed out that it was possible for the Board to conclude that some of the store managers do and others do not exercise managerial functions within the meaning of section 1(3)(b) of The Labour Relations Act. The Board requested the parties to make representations on a description of the appropriate bargaining unit. Only the applicant has addressed itself to this question. However, the applicant has not suggested a description which solves the exclusions from the bargaining unit and which obviates the use of the term "store manager". In the instant application, the Board has determined that Mr. Parkin and the parties have apparently agreed that Mr. Rubin exercise managerial functions. On the other hand Mr. Ferreira is also described as a store manager and the Board has determined that he does not exercise managerial functions. Clearly the exclusion of "store manager" is not satisfactory in the circumstances of this application. The Board proposes to define the appropriate bargaining unit without any designated level of exclusion which is based upon a title. In the event that any question arises between the parties regarding whether a person is an employee, the question may be referred to the Board pursuant to section 95(2) of The Labour Relations Act.

14. Having regard to the representations of the parties, the Board further finds that all pharmacists, pharmacists' interns and student pharmacists employed by the respondent in Metropolitan Toronto, save and except persons regularly employed for not more than twenty-four hours per week, constitute a unit of employees of the respondent appropriate for collective bargaining.

15. For the purpose of clarity the Board declares that J. Parkin and B. Rubin are not included in the bargaining unit and that I. Acenberg, S. Ferreira, N. Law, J. Brown and M. Dolmer are included in the bargaining unit.

16. The Board is satisfied on the basis of all the evidence before it that more than fifty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant on August 12, 1976, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

17. A certificate will issue to the applicant.

1796-75-U Kraan, John, (Complainant), v. United Steelworkers of America, Local 6571, (Respondent), v. Lake Ontario Steel Company Limited, (Intervener).

Strike – S79 – Strike Vote – S63(5) – Whether complainant given ample opportunity to cast a ballot – Whether temporary foreman properly excluded from vote – Whether Board will order vote and related meetings reconducted.

BEFORE: Kevin M. Burkett, Vice-Chairman and Board Members P.J. O’Keeffe and J.E.C. Robinson, Q.C.

APPEARANCES: *T.J. Collier for the complainant; Lorne Ingle and G.I. Wareham for the respondent; I.H. McGowan for the intervener.*

DECISION OF KEVIN M. BURKETT AND P.J. O’KEEFFE: April 27, 1976

1. This is a complaint filed under section 79 of the Act alleging a violation of section 63(5) of the Act. The complainant alleges that he was not given an “ample opportunity” to vote on the question of a strike which was placed before the general membership of Local 6571 of the United Steelworkers of America on February 16, 1976. This complaint was filed on 9th March, 1976.

2. The complainant, Mr. John Kraan, is employed by the intervener company, Lake Ontario Steel Company Limited, as a first helper on the electric furnace and has held that position for approximately three years. He has been a member in good standing of the United Steelworkers since he was first employed by the company 11 years ago. He has acted as a temporary foreman for a total of 26 days over the period of the last two years. In that capacity he relieves and assumes the responsibilities of a regular foreman who is ill, on vacation or absent for whatever reason and is identified during these periods by the wearing of a white safety helmet. The evidence indicates that the issue of temporary foremen has been a contentious one between the company and union for a number of years.

3. The evidence establishes that on Tuesday, February 16, 1976 a general membership meeting of United Steelworkers, Local 6571 was called for the purpose of considering certain contract proposals and of either ratifying these or of authorizing strike action. The meeting which was scheduled to commence at 9:00 a.m. was preceded by a vocal dissatisfaction by the membership with the presence of the temporary foremen at this meeting. Mr. D. Tobin, the local union president, and Mr. G. Wareham, the union’s Eastern Ontario Supervisor, testified that they were made aware of the dissatisfaction as they walked from the back to the front of the hall. Mr. Wareham referred to a “consensus” that the temporary foremen should not be there while Mr. Tobin acknowledged that it was the obvious wish of the membership that they not be there.

4. The evidence of both Mr. Kraan and Mr. J. MacDonald, another temporary foreman, who testified on behalf of the complainant, indicates that as soon as the meeting was called to order a motion was made from the dias that all temporary foremen leave the hall and that the motion was seconded and then passed by a show of hands. Both Mr. Kraan and Mr. MacDonald testified that they were then asked to leave the hall and did so in the

company of 7 or 8 other temporary foremen. The evidence of both Mr. Tobin and Mr. Wareham, however, was to the effect that although a statement was made by Mr. M. McLean, a committeeman sitting at the front of the hall, that all temporary foremen be asked to leave, there was confusion as to whether it was a motion or notice of motion, (a notice of motion would be considered at the next general membership meeting) and that in fact it was not voted upon. It was their evidence that the temporary foremen left the hall without being asked to do so. The evidence is clear that no action was taken by anyone or the union executive or by the international representative to indicate to the membership that the temporary foremen had a right to stay or to attempt to convince the temporary foremen that they were welcome to stay. Mr. Kraan phoned Mr. Tobin that afternoon to ask why he and the other temporary foremen had been asked to leave. Although another meeting was scheduled that afternoon to allow those who had not been present at the 9:00 a.m. meeting an opportunity to vote, Mr. Tobin made no reference to the afternoon meeting but rather told Mr. Kraan that temporary foremen will never be allowed to vote again. The final tabulation of the vote showed 295 in favour of strike and only 22 opposed.

5. Sections 63(4) and (5) of the Act state:

“63. (4) A strike vote or a vote to ratify a proposed collective agreement taken by a trade union shall be by ballots cast in such a manner that a person expressing his choice cannot be identified with the choice expressed.

(5) Any vote mentioned in subsection 4 shall be conducted in such a manner that those entitled to vote have ample opportunity to cast their ballots.”

6. The respondent trade union admits that the temporary foremen of the Lake Ontario Steel Company Limited who were members in good standing of the local were *entitled* to vote. Counsel for the respondent argued, however, having regard to the evidence of Messrs. Tobin and Wareham that the complainant did have “ample opportunity” to cast his ballot but voluntarily left the hall in the company of the other temporary employees. In support of this argument he referred to the fact that two temporary foremen remained and voted. The Board has considered all of the evidence and has concluded that Mr. Kraan did not have ample opportunity to cast his ballot. Both Mr. Tobin and Mr. Wareham were able to ascertain the vocal consensus of the membership in the period of time it took them to walk from the back to the front of the hall. Immediately upon calling the meeting to order a motion was then made from one of the committeemen that all temporary foremen be asked to leave the hall. We do not believe that there could be any confusion with respect to it being a motion and not a notice of motion. We believe that someone from the dias, whether authorized or not, asked the temporary foremen to leave the hall and we further believe the testimony of Mr. John MacDonald that he feared violence at this point if he and the other temporary foremen did not leave the hall. In all of this no effort was made by anyone in authority to protect the right of the temporary foremen to take part in the meeting or at least to inform the meeting that the temporary foremen had this right. The Board has paid particular attention to the response of Mr. Tobin to the subsequent telephone call from Mr. Kraan as evidence of the unresponsiveness of the union executive. The Board finds, therefore, notwithstanding the fact that two temporary foremen remained, that the respondent trade union has violated section 63(5) of the Act. In all of the circumstances Mr. Kraan, the complainant, did not have ample opportunity to cast his ballot.

7. The complainant asks that the Board in effecting a remedy for this breach of the Act direct that the trade union reconduct the vote. In other words the complainant asks that the Board turn back the clock to February 16, 1976 and direct that the membership vote on the proposal which was before it prior to the commencement of what is now a seven week strike. Counsel for the complainant argues that it is not sufficient to allow the complainant to simply mark a ballot at this point but rather he argues that the aggrieved person must be given an opportunity to partake fully in the meeting, to speak to the issues and to be given the opportunity to sway others.

8. The issue of remedy is a most difficult one in the circumstances of this case. The purpose of a remedy is to rectify a wrongdoing to whatever extent it is possible and to "make whole" the persons adversely affected by the wrongdoing. Having regard to the tenor of the meeting of February 16, 1976, as described by both the witnesses for the complainant and the respondent, and to the onesidedness of the vote, the Board cannot logically conclude that the complainant or the other temporary foremen could have materially affected the outcome if they had been given the opportunity to remain and cast ballots. *In the circumstances of this case* the Board is able to conclude (without making a finding as to whether the obligation imposed by section 63(5) goes beyond the simple marking of the ballot) that the marking of the ballot would leave the complainant "whole" in that he and the other temporary foremen could not have altered the outcome or changed the course of events if allowed to remain. Although denied the opportunity to cast their ballots a direction that they now be permitted to do so would serve no useful purpose in the light of the one-sidedness of the vote.

9. Notwithstanding these observations, the Board has considered the advisability of directing the parties to reconvene the February 16th meeting at some date in the near future and has concluded that to do so would be a hollow exercise at best. A seven week strike has transpired since the February 16th meeting took place and undoubtedly the bargaining positions of the parties have been altered in this time. Even if the bargaining positions have not been altered it would not be possible at this date to recreate the pressing considerations which were before the membership on February 16, 1976 or to in any way change the subsequent course of events. Furthermore, having regard to the fact that the parties are now at a critical stage in their bargaining, such a reconvening of the February 16th meeting could prove counter-productive if it were to result in the divulgence of confidential information relating to the present bargaining positions of the parties. The Board is not prepared to create a situation which might compromise the necessary secrecy of the on-going negotiations in order to effect what in essence would be a hollow remedy.

10. In the circumstances of this case, having particular regard to the time lapse since the February 16, 1976 meeting, and to the intervening events, the Board is not prepared to direct that that meeting be reconvened. The Board declares, however, that the respondent trade union has violated section 63(5) of the Act and will remain seized of this matter for the purpose of hearing further evidence in the event the complainant is denied ample opportunity to cast his ballot in any subsequent ratification vote arising out of the current negotiations between the company and the union.

DECISION OF J.E.C. ROBINSON, Q.C.:

I am in agreement with the majority that the respondent trade union has violated section 63(5) of The Labour Relations Act.

I am not in agreement, however, with the ultimate remedy granted by the majority.

In my opinion, and I would so find, the Board should direct that the meeting of February 16th, 1976 be reconvened, that there should be ample time for discussion given to all persons entitled to cast ballots, including those who have acted as temporary foreman, and that a new vote should be conducted among all those entitled to vote and they should have ample opportunity to cast their ballots.

1291-75-U, 1292-75-U, 1293-75-U, 1294-75-U, 1334-75-U, Warehousemen and Miscellaneous Drivers Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, (Complainant) v. F. W. Woolworth Co. Ltd., (Respondent).

Discharge for Union Activity – S79(4a) – Whether employees laid off because of seasonal business slow down – Whether evidence of employer knowledge of union activity created by union – Whether complainant must adduce evidence as to organizational campaign.

BEFORE: D. H. Kates, Vice-Chairman, and Board Members P. J. O’Keeffe and J. E. C. Robinson, Q.C.

APPEARANCES: *G. Beaulieu and R. Cumine for the applicant; R. A. Werry, F. Hennig and M. Seeley for the respondent.*

DECISION OF D. H. KATES, VICE-CHAIRMAN, AND BOARD MEMBER J. E. C. ROBINSON, Q.C.; March 16, 1976:

1. These are a series of complaints filed under section 79 of the Act alleging that the five grievors named herein were discharged for their attempts to acquire bargaining rights on behalf of the employees employed at the respondent’s warehouse on Sheppard Avenue in Metropolitan Toronto.

2. The background circumstances giving rise to this complaint are as follows. In late September after having completed several weeks employment with the company as “a filler”, Michael Snow realized that his colleagues were in need of a trade union. He had observed that Mr. Bob McGaw appeared to be a leader of men and “sensed” that he knew something about organizing employees for collective bargaining purposes. In mid-October he confronted Mr. McGaw and they resolved to set up a committee for the conduct of an organizational campaign. Mr. McGaw explained that he was to assume “a low profile” in establishing strategy while Mr. Snow was to assume “a high profile” in seeking out supporters with “backbone” who would stand up to the employer and set an example to other employees. It is alleged that in addition to Mr. Snow and Mr. McGaw, the grievors Ted Flowers, John Leach and Brian Dunham composed the trade union’s membership committee. Mr. Adlwin Rangoo also became a member of the committee on November 3, 1975. He indicated that he had volunteered his services and offered his home for committee meetings.

3. The respondent employer operates a retail variety business through its Woolworth and Woolco stores located across Canada. To service these stores a huge warehouse was recently built on Sheppard Avenue in Metropolitan Toronto. According to the seasonal nature of the respondent's business, lay-offs at the warehouse are anticipated from mid-October to the end of November. These lay-offs usually precede lay-offs for similar reasons at the retail outlets after the Christmas rush. In the fall of 1975 these anticipated lay-offs were hastened by the concurrent national mail strike. It appears that the warehouse operations serves as a cross-country distribution centre for all of the respondent's stores. Orders for goods are either mailed to the warehouse or are dispatched through the respondent's internal communications system. The respondent indicated to the Board that the slow down attributed to the mail strike contributed to the employer's decision to reduce its work force that autumn.

4. Mr. John Petre is the respondent's personnel manager responsible for industrial relations at the respondent's warehouse. It appears that "cost of sales" figures are maintained by the respondent on a weekly basis. The respondent's practice is to take recourse when the cost of salaries exceed cost of sales. In late October Mr. Petre was informed by the warehouse manager that the respondent was approaching its seasonal lay-off period. Mr. Petre then explained that a message was relayed to the departmental supervisors who were instructed to prepare a list of employees who should be let go. Mr. Petre stated that the respondent's approach to making these lay-offs was to relieve itself of employees with poor work habits first and thereupon to release the probationary employees. In the latter respect, it is the respondent's practice to assure itself that a probationary employee has accumulated at least eight weeks service with the company so as to render him eligible for unemployment insurance benefits. This general practice was confirmed on several occasions during the course of the grievors' testimony.

5. Mr. Snow was laid off on October 31, 1975. The evidence indicates that he was hired on August 18, 1975. He admitted to the Board of an altercation with Ernie Medland, the brother of George Medland the supervisor of the fill order department. He anticipated as a result of this dispute that his job may be insecure. He approached Mr. Petre for a transfer to another department. Mr. Petre is said to have indicated at that time that his work performance was not up to par. In any event, the week-end before his discharge he was absent from work allegedly because he was sick. He failed to report to the respondent his absenteeism in accordance with the employer's instructions. The respondent nonetheless telephoned the grievor on the day he was absent but the call went unanswered. At the time of the lay-off Mr. Snow was given his last pay cheque and his unemployment insurance papers. Mr. McGaw was laid off on November 10, 1975. He was a probationary employee engaged in the order filling department. He was told by Mr. Petre that he was being laid off because of a work shortage. In Mr. Petre's view Mr. McGaw was a satisfactory employee. Mr. Medland, his supervisor, held a contrary view. He informed the Board that Mr. McGaw was more interested in reorganizing the respondent's operations than applying himself to his job duties. Mr. Snow confirmed however that both he and Mr. McGaw prior to their lay-off were transferred to the shipping department. Nevertheless the week of November 10th, when the lay-offs of Messrs. McGaw, Dunham and Flowers were effected, was said to have been an extraordinarily busy period. Mr. Flowers was laid off the day following that of Mr. McGaw. The evidence indicates that Mr. Flowers was not of robust health. His record of absenteeism as reflected in his time cards can only be described as abysmal. The respondent's excuse for having tolerated Mr. Flowers' absenteeism for so long a period was

simply because they felt sorry for him. Mr. Dunham commenced employment as a reach truck operator and stock clerk on September 9, 1974. On November 12, 1974 he was approached by his foreman Joe Lamourea and was informed because of the economic situation that he was being laid off. Mr. Lamourea in his evidence indicated that Mr. Dunham was not in his view the most ideal employee. There was some mention in Mr. Dunham's testimony of an argument with one of his supervisors. It appears that a foreman was upset with the way in which Mr. Dunham had packed a particular order. The effect of the complaint was to cause Mr. Dunham to respond with an obscenity. Although such language was not uncommon in the respondent's warehouse, Mr. Petre, when he learned of the incident, advised the supervisor to record the event on the employee's record. Mr. John Leach learned of his lay-off on November 20th. He was told that he was being laid-off because of a shortage of work. At that time he was told that he was a capable employee and that in the event the company, in the short future, required his services he would be recalled. On two occasions prior to his discharge Mr. Leach was asked by a supervisor to remove Teamster propaganda from his reach truck because he was defacing company property. Mr. Leach was given his last pay cheque and termination papers at the time of his lay-off.

6. During the period between September 26th to November 24th the company laid off approximately twenty employees; five of whom were the grievors. The company maintained records of the reasons for the lay-offs in each of the employee's personnel file. It is quite clear from the evidence that these records contain comments about the employees that apparently were inserted by the supervisors at the time of or after their severance from the respondent's employ. The Board is of the opinion that such information may be readily inferred to have been inserted in their files as a result of the business proposition put by Mr. Beaulieu, the complainant's business agent, in his meeting with Mr. Petre on November 13th (See paragraph 10). Nevertheless to the extent that the employer is required to satisfy the initial onus of establishing a reason for the lay-offs, other than trade union activity, we are of the view, notwithstanding certain inconsistencies in the employer's conduct, that the anticipated seasonal slow down aggravated by the mail strike may very well have justified the termination of a number of its employees. However, the question that must ultimately be resolved in this case is whether the employer merely exploited these circumstances to disguise the real reason for the terminations.

7. The key issue in the circumstances adduced before us is the determination of whether the employer knew of the grievors' union activities at the time of the lay-offs. The trade union's principal witness in this regard was Mr. Aldwin Rangoo. He testified that on the morning of November 10th, he approached the respondent's assistant manager and told him of the employees' organizational campaign. The assistant manager, Mr. Rosanno, then reported the interview to Mr. Petre. Mr. Petre thereupon summoned Mr. Rangoo to his office. Mr. Rangoo at first told the Board that he was scared that "some tough guys" working for the trade union were going to take drastic action and he wanted the employer's protection. He indicated that Mr. McGaw was the leader of the campaign and upon further prodding by Mr. Petre he informed that Mr. Flowers was also involved. Mr. Rangoo changed his story during the course of his cross-examination. He indicated that after he committed himself to the union campaign he began to feel insecure about his job. He thereupon devised a scheme whereby if he informed on Mr. McGaw and that information resulted in his discharge then the campaign would simply dissipate. Should that transpire his job situation with the employer would thereby remain secure. He indicated that he informed on Mr. Flowers only because of the probing of Mr. Petre who alleged that Mr. Ran-

goo "owed him one". Curiously, he did not disclose to Mr. Petre at that time the roles of Mr. Snow (who had heretofore been terminated) or Mr. Dunham or Mr. Leach.

8. That evening a meeting of the membership committee occurred at Mr. Rangoo's residence. He felt nervous and uncomfortable in their presence. Afterwards he phoned Mr. McGaw and confessed. He told him of his meeting with Mr. Petre. Mr. McGaw arranged to meet with Mr. Rangoo the next evening at his home. There in the presence of John Leach, Ted Flowers, Guy Beaulieu (the applicant's business agent) and Bob McGaw he wrote a recitation of the previous day's events. In that written communication he named particularly Bob McGaw, J. Snow and Ted Flowers as members of the committee. Again, the names of the other members of the committee were not mentioned. Indeed earlier that day Ted Flowers had just been informed of his termination. Mr. Rangoo stated that McGaw had told him that they intended to use the letter as evidence presumably to support their case before this Board.

9. Mr. Rangoo denied any further meeting with members of management save the meeting with Mr. Petre on November 10th. Nevertheless upon intensive cross-examination by counsel for the respondent he admitted to a second meeting with Mr. Petre on November 14th and to a meeting that he had arranged on November 26th with Mr. Hennig, vice president and Mr. Gray, senior vice president on the respondent's executive board. At the meeting with Mr. Petre on November 14th Mr. Rangoo indicated to him that he was a union committee member. On November 26th he met with the respondent's executive members at which time he sought their help in that he had been subpoenaed to testify before this Board. Mr. Hennig told the Board that Mr. Rangoo appeared scared and upset. He admitted to writing the letter at the insistence of and under extreme pressure from Mr. McGaw. Mr. Hennig advised Mr. Rangoo that there was nothing the respondent could do for him except to advise that he seek legal counsel. Mr. Rangoo once he admitted to the meeting stated that he did not confess that he was forced into writing the letter. At this particular juncture of the campaign, the Board was informed that the respondent company was investigating certain unsavoury campaign incidents allegedly indulged in by the complainant trade union.

10. Mr. Petre admitted that he only learned of the trade union activities of Messrs. Snow, McGaw, Dunham and Flowers on November 13th when he was confronted by Mr. Guy Beaulieu, the complainant's business agent, who offered the respondent the choice of reinstating the grievors prior to commencing the instant proceedings. In cross examination Mr. Petre also told the Board of his conversation with Mr. Rangoo on November 10th. He said it was a brief conversation where Mr. Rangoo appeared upset and scared because of the prospect of a union's campaign. Mr. Petrie indicated that the rumour of a union campaign was not particularly unique in the employer's warehouse. Often the respondent's washroom walls were resplendant with "graffiti" with respect to joining or supporting a trade union. Mr. Petre merely extended assurance to Mr. Rangoo with respect to his concerns about "the tough guys" and told him to return to his job. He categorically denied being told at that time of Mr. McGaw's or any one else's trade union activities.

11. Mr. Petrie indicated that the company's policy once an employee is terminated is to escort him immediately from the premises. In this regard the company's concern is once an employee is let go the respondent ought to exercise some caution lest some recourse be taken by the employee against its property. Of the five grievors, both Messrs. Snow and

Leach were given their pay cheques and unemployment insurance papers at the time of their terminations. No evidence was adduced with respect to the procedure followed by the respondent in connection with the fifteen other employees who had left on their own accord or who were otherwise laid off or terminated.

12. The Board is of the view that the real dilemma in this case is one of credibility. The complainant's witness, Mr. Rangoo, is essentially the key to employer knowledge of the grievors' trade union activity. Board Member O'Keeffe in the most explicit of terms indicated to the parties during the course of argument his assessment of Mr. Rangoo's testimony. Suffice it to say for purposes of the disposition of the issues before us that his evidence is simply unworthy of belief. We not only disbelieve his motives for approaching Mr. Petre on November 10th, we also categorically reject that he disclosed the identities of the complainant's organizers. Firstly, we are satisfied he did not inform on Mr. Snow on November 10th, because the uncontradicted evidence shows that Snow had heretofore been informed of his lay-off on October 31, 1975. Indeed, the Board holds that Mr. Snow's "sensing" of Mr. McGaw's experience in trade union matters and the subsequent strategy formed of the latter assuming "a low profile" and the former "a high profile" is a sheer and utter contrivance to compensate for the failings of the evidence with respect to the coincident meeting on November 10th with Mr. Petre and the subsequent terminations. With respect to these terminations the Board notes that Mr. Rangoo's letter dated November 11, 1975 identifies Messrs. Snow, McGaw and Flowers but it does not mention Dunham and Leach. Why? We simply concluded that their names were not mentioned because Messrs. Dunham and Leach had yet to be informed of their lay-offs. Had Mr. Rangoo written the letter on the 12th or indeed the 20th of November we have every confidence that at Mr. McGaw's insistence their names would have also appeared. We are satisfied that when it served the complainant's purpose they conveniently inserted the appropriate name identifying the person laid off as a likely prospect for reinstatement for alleged participation in trade union activity. In other words where Mr. Rangoo's testimony conflicts with that of Messrs. Petre and Hennig with respect to the meetings of November 10th and thereafter we prefer the latter's evidence. The Board simply cannot turn its cheek to the patent scheme adopted by the complainant to stage the scenario for justifying their allegations in support of its reasons for the discharges. Mr. Leach's situation is a case in point. He was observed by his foreman on November 19th allegedly defacing company property by putting Teamster "stickers" on his reach truck. He was asked by his foreman to remove them. He complied with the foreman's request. The very next day he was observed once again operating his reach truck with the impugned literature attached to the truck. That very day Mr. Leach along with two other colleagues were informed of their terminations. The Board accepts Mr. Petre's admission at face value that he does not approve of trade unions. Furthermore, we hold it almost axiomatic that the respondent would not necessarily accept with favour the certification of a trade union as the bargaining representative of its employees. What we cannot accept however as a viable proposition in the fact of Mr. Petre's encounter with Mr. Beaulieu on November 13, 1975 (a fact admitted by the trade union in paragraph 5 of its complaint) that it would be so easily entrapped by Mr. Leach's behaviour. Rather it appears that Mr. Leach's lay-off, notwithstanding the disclosure to all of his trade union affiliation, is more consistent with the seasonal slow down of the respondent's operations. And in resolving this to be the real reason for the termination, the Board repeats that nothing in the Labour Relations Act inhibits an employer from exercising its management prerogatives in an even-handed responsible fashion during the course of a trade union's organizational campaign.

13. Finally, before disposing of these complaints, it appears to us that save for Mr. Leach's tactics there is no mention in the evidence of any trade union activity pertaining to the organization of employees by Local 419. The reverse onus provisions of the *Labour Relations Act* do not necessarily excuse a complainant from coming forward with its best evidence with respect to the breadth and scope of its organizational campaign. Such evidence is crucial with respect to imputing employer knowledge, if any, of that campaign and the participants thereto especially, in the face of *prima facie* evidence of a credible excuse for the terminations. The substance of the progress of a trade union's organizational campaign is something peculiar to the knowledge of the trade union and its representatives. Failure to adduce evidence that is so relevant to the trade union activities for which the grievors were allegedly discharged is at a complainant's peril. In the circumstances of this case, Mr. Guy Beaulieu was seated beside counsel throughout the proceedings. At several occasions throughout the hearing his name was mentioned and particularly with respect to the meeting with John Petre on November 13, 1975. Surely, Mr. Beaulieu, the complainant's business agent, was in a supremely enviable position to inform the Board of the steps that had been taken at all relevant times with respect to the complainant's attempts to organize the respondent's employees. For reasons best known to the complainant, the Board was deprived of his first hand evidence.

14. As a result of the foregoing, the Board is satisfied that the respondent did not discharge the grievors for reasons contrary to the unfair labour practice provisions of the Act. Accordingly, the complainants are dismissed.

DECISION OF BOARD MEMBER P. J. O'KEEFFE.

I dissent. Written reasons to follows.

1863-75-R Retail Clerks Union, Local 206, (Applicant), v. **T.R.S. Food Service Limited**, (Respondent), v. Retail, Wholesale, and Department Store Union, AFL:CIO:CLC, (Intervener), v. Group of Employees, (Objectors).

- and -

1894-75-R Retail, Wholesale and Department Store Union, AFL:CIO:CLC, (Applicant), v. **T.R.S. Food Service Limited**, (Respondent), v. Retail Clerks Union, Local 206, (Intervener), v. Group of Employees, (Objectors).

Certification – Evidence – Whether the Board will allow a party to call a witness to impeach the credibility of witnesses called by the same party – Certification procedure – S7(2) – Procedure followed by the Board where two applicants file evidence of membership support in excess of 55%.

BEFORE: Kevin M. Burkett, Vice-Chairman and Board Members N.B. Satterfield and R. White.

APPEARANCES: *File No. 1863-75-R – J.A. Ryder and H.G. Jurchuk for the applicant; D.L. Black, L. W. Fowler for the respondent; H. Buchanan and G. Reekie for the intervener; no one appeared for the objectors.*

File No. 1894-75-R – H. Buchanan and G. Reekie for the applicant; D. L. Black and L. W. Fowler for the respondent; J. A. Ryder and H.G. Jurchuk for the intervener; Alfred Smith for the objectors.

DECISION OF THE BOARD: April 23, 1976

2. There are two applications for certification filed on behalf of the same employees of the respondent employer which the Board, pursuant to section 92(3)(a) determines to have been filed simultaneously.

4. Having regard to the agreement of all the parties the Board finds that all employees of the respondent in Woodstock, Ontario save and except supervisor, persons above the rank of supervisor and office staff, constitute an unit of employees of the respondent appropriate for collective bargaining.

5. The Retail Clerks Union, Local 206 filed charges in this matter dated April 2, 1976 which in essence allege that the respondent company persuaded its employees to disassociate themselves from the Retail Clerks Union, while at the same time encouraging its employees to sign membership cards with the Retail, Wholesale and Department Store Union, thereby enabling that union to file its application dated March 26, 1976. A hearing was convened on Monday, April 12, 1976 to hear evidence in support of these charges.

6. The Retail Clerks Union called four employees of the respondent company to give evidence. The evidence of all of these persons, which does not conflict other than with respect to the exact time of a meeting which occurred at the Pines Motel on March 22, 1976, does not support the allegations as set out in the letter of April 2, 1976. The Retail Clerks Union then called Mr. R. Dwyer, a representative of that union, who had been responsible

for the union's organizing campaign at T.R.S. Food Service Limited, Woodstock. Counsel for the Retail Clerks Union acknowledged that the purpose of calling Mr. Dwyer was to impeach the credibility of the other witnesses he had called by establishing that they had made prior inconsistent statements; these statements having been made to Mr. Dwyer and recorded by him in the course of his preparatory investigation with respect to the charges subsequently filed.

7. Section 92(2)(j) of The Labour Relations Act gives the Board the power to accept such oral or written evidence as it deems proper whether admissible in a court of law or not. The Board, notwithstanding the power given it under section 92(2)(c), follows the basic rules of evidence in an attempt to conduct ordered and fair hearings and has regard for the pronouncements of the courts with respect to evidentiary matters. The Board allowed counsel to call Mr. Dwyer for the purpose of impeaching the credibility of the previous witnesses. Section 24 of The Ontario Evidence Act permits a party producing a witness to contradict him by other evidence or if he proves adverse, prove by leave of the judge that he made prior statements inconsistent with his testimony, provided that he is first asked whether or not he made these statements. In the *Wawanesa Mutual Insurance Co. v. Haneb* 1961 DLR (2d) 386 it was held that the word "adverse" is not restricted to cases where a witness was "hostile" but included any case in which a witness by his evidence assumed a position opposite to the party calling him and it was shown that he had made a former inconsistent statement. (See *Evidence in Civil Cases*, Sopinka and Lederman, Butterworths, 1974). The Courts have further held that a judge in determining if a witness is indeed adverse should hear evidence with respect to prior inconsistent statements after the witness has been confronted with these prior statements.

"It is utterly improbable that the witness' testimony would have been offered if it had been anticipated that his evidence would have taken an untoward turn, and adverseness in a witness generally presents itself to the party who called him as a highly astonishing and unexpected development. The fact that the witness who is alleged to have proven adverse made at some other time a statement at variance with his testimony then under consideration is in the highest degree material to the subsidiary issue thus raised and, indeed, I cannot think of any single fact or piece of evidence that would be more competent as an aid in its determination."

(See *Roland V. Globe & Mail Ltd.* – 1961 – 21 DLR (2d) 401 – Schroeder J.A. at p.9 423).

8. The Board has before it in this matter the evidence of the four employees who were called by the Retail Clerks Union. Their evidence does not support the allegations filed on April 2, 1976. In addition, the Board has before it the evidence of Mr. Dwyer which calls into question the credibility of these four witnesses but which also does not support the allegations. Mr. Dwyer's evidence and his notes are hearsay as they relate to the facts in issue. There is no probative evidence before the Board in support of the allegations and the Board, therefore, without having to make a finding with respect to the credibility of the four employees of the respondent who gave evidence, must find that there is no substance to these allegations and dismisses them.

9. The Board is satisfied on the basis of all the evidence before it that more than fifty-five per cent of the employees of the respondent in the bargaining unit at the time the

application was made, were members of the Retail Clerks Union, Local 206 on March 29, 1976, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

10. The Board is also satisfied on the basis of all the evidence before it that more than fifty-five per cent of the employees of the respondent in the bargaining unit at the time the application was made, were members of the Retail, Wholesale and Department Store Union, AFL:CIO:CLC on April 2, 1976, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

11. The Board, therefore, follows its normal practice in circumstances such as these and pursuant to section 7(2) of the Act and directs that a representation vote be taken. Those eligible to vote are all employees of the respondent in Woodstock, Ontario save and except supervisor, persons above the rank of supervisor and office staff, on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is taken. Voters will be asked to indicate whether they wish to be represented in their employment relations with the respondent company by either the Retail Clerks Union, Local 206 or the Retail, Wholesale and Department Store Union, AFL:CIO:CLC.

12. The matter is referred to the Registrar.

1863-75-R Retail Clerks Union, Local 206, (Applicant) v. **T.R.S. Food Service Limited** (Respondent), v. Retail, Wholesale and Department Store Union, AFL:CIO:CLC, (Intervener), v. Group of Employees, (Objectors).

Charges – Procedure – Adjournment – Whether the Board will grant an adjournment where the filing of charges catches a party by surprise – Whether the party filing the charges will be granted an adjournment.

BEFORE: Kevin M. Burkett, Vice-Chairman and Board Members N.B. Satterfield and R. White.

APPEARANCES: *Harold Jarchuk, Paul Dwyer and Rick Sjoerds for the applicant; R.C. Fillion and L.L. Fowler for the respondent; Gordon D. Reekie for the intervener, Alfred Smith for the objectors.*

DECISION OF THE BOARD: April 9, 1976

1. This is an application for certification.

2. The Board finds that the applicant is a trade union within the meaning of Section 1(1)(n) of the Labour Relations Act.

3. The applicant trade union notified the Board by telegram dated March 24, 1976 that it intended to file charges in this matter. These charges and the particulars in support thereof were contained in a letter dated April 2, 1976 which was delivered to the Board shortly before the commencement of the hearing on April 5, 1976. The applicant alleges company involvement in the circulation of a petition in opposition to its application and company assistance in the securing of membership by the intervener in support of the intervener's application for certification covering the same employees which was filed on March 26, 1976.

4. Counsel for the respondent argued that the Board should exercise its discretion under Rule 47(2) and refuse to permit the applicant to adduce evidence in support of these charges. The Board, having regard to the nature of the charges and to the telegram forwarded by the applicant on March 24, 1976 ruled that it wished to hear evidence with respect to the charges but that it was prepared to grant an adjournment if either the respondent or intervener was not prepared to proceed in the face of the late filing. Counsel for the respondent admitted that he was not prepared to proceed but stated that he did not see any witnesses present and therefore doubted that the applicant was prepared to proceed in any event. He asked the Board to direct the applicant to call evidence and argued that if the applicant was unable to proceed the charges should be dismissed. The intervener trade union indicated that it was caught by surprise and was not ready to proceed.

5. Mr. J. Jurchuk, a layman who appeared on behalf of the applicant, argued that he knew the late filing of both the charges and the particulars would catch the other parties by surprise and thereby necessitate an adjournment. He did not consider it necessary in these circumstances to have his witnesses present when in the normal course they would not be called to testify until some later date.

6. The Board did not order the applicant to proceed and instead directed that the matter be heard in full at a future date to be set by the Registrar. The respondent requested written reasons for the oral decision of the Board.

7. The Board will grant an adjournment if a party is caught by surprise in the filing of charges. If, however, the surprised party is prepared to proceed with a full hearing the Board will order that the matter be heard and it is incumbent upon the party filing charges to call evidence in support thereof unless it can secure an adjournment by agreement of the parties. In the matter at hand the applicant, in the absence of securing an adjournment by agreement of the other parties, risked having the Board dismiss the charges for lack of evidence; which it would have done if the respondent and the intervener had been genuinely prepared to proceed. Counsel for the respondent, however requested that the Board direct the applicant to call evidence on the basis of his observation that there were no witnesses present while admitting that he was not prepared to proceed with a full hearing in the face of the late filing of the charges. The intervener made no representations other than that it was caught by surprise.

8. The Board repeats that if both the respondent and the intervener trade union had been genuinely prepared to proceed it would have required the applicant to lead evidence in support of its charges. However, having regard to the fact that the matter could not have been heard in full in any event, the Board was not prepared to take a course of action which would have resulted in a technical dismissal of charges central to the issue before it. The

Board therefore directed that the matter be heard in full at a time when all parties would be prepared to proceed to a conclusion.

1828-75-R Teamsters Local 141 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, (Applicant) v. **N-J Spivak Limited**, (Respondent) v. Group of Em!ployees, (Objectors).

Petition – Effect of originator of petition meeting and discussing working conditions with management, being granted time off to circulate petition and discussing with petitioners improvements company would consider.

BEFORE: Kevin M. Burkett, Vice-Chairman and Board Members H.J.F. Ade and P.J. O'Keeffe.

APPEARANCES: *I.J. Thomson and E. Winegarden for the applicant; J.B. Noonan, George Shaw and Jim Spivak for the respondent; M.K. Wilson and D.G. Munro for the objectors.*

DECISION OF THE BOARD: April 5, 1976

1. This is an application for certification.

• • •

4. The Board was in receipt of a statement of desire in opposition to the application which, if proven voluntary, would affect the Board's discretion to grant the applicant union outright certification. Accordingly, the Board conducted its usual inquiry into the origination, preparation and circulation of the document. Mr. M.K. Wilson appeared before the Board to give evidence in this regard. He is a mechanic who has been employed by the respondent company for four years. It was his evidence that he drafted the preamble which reads:

"The undersigned employees oppose the application for certification of N-J Spivak Limited."

and had it typed by a personal friend during the morning of Friday March 19, 1976. He testified that he told his foreman that he would be absent from work the afternoon of Friday March 19. He further testified that he had made such requests in the past and that there was nothing unusual about making such a request on this occasion. He picked up the typed document in the early afternoon at the home of his personal friend and then returned to the premises of the respondent employer, in his street clothes, and commenced to obtain the signatures which appeared on the document. The persons who signed the document were at work at the time of placing their signatures on it. He testified that he did not see any foremen or supervisory personnel when he returned to the work location although he was on the premises for approximately one hour. He then took the document to the post office and had it mailed to the Board. He was not paid for the time away from work.

5. It was established in cross-examination that on Tuesday, March 16, 1976 (three days subsequent to the application being filed in this matter but two days prior to the posting of the official notice which was sent to the company under cover of the Board's letter dated March 15, 1976) a notice was placed on the blackboard in the garage advising the employees of a meeting to take place on March 30, 1976 between management and the employee representatives to discuss "benefits and cash possibilities." It was established that these are annual discussions which normally take place in April between the employer and the local employee group. It was Mr. Wilson's evidence that, although not an elected or appointed employee representative, he went to the office of the company comptroller, Mr. G. Shaw, in the company of Mr. G. Isaac an elected representative of the employees, on Wednesday March 17, 1976 in order to discuss the blackboard notice. He returned to Mr. Shaw's office alone during the morning of Friday, March 19, 1976 (after the official notice of the union's certification was posted) and spent approximately 45 minutes continuing to discuss the matters referred to on the blackboard notice. Mr. Wilson testified that although Mr. Shaw did not make any specific offers the topics of discussion included a dental plan, life insurance, long term disability, OHIP, and cash increments. Mr. Wilson admitted that in circulating the document in opposition to the union he raised the matter of the "benefits and cash possibilities" and asked of his fellow employees, "What more could a union do?"

6. The Board in deciding upon the voluntariness of a statement of desire must look to the state of mind of the persons who signed the document having regard to the nature of the employer/employee relationship as set out in the *Pigott Motors* case 63 CLLC 16,264. The Board stated in the *Morgan Adhesives of Canada Limited* case (1975) Rep. Nov. 813:

"The Board, however, must be guided by the overall environment in the workplace and the cumulative impact of events. In a not inconsiderable number of cases the Board has found on the basis of the cumulative effect of the evidence before it that unintentional acts or tacit behaviour by management served to create a 'climate' which thwarted voluntary expression. In the *Imperial Paving* case (1966) OLRB M.R. July at page 255 the Board said:

...The task facing the Board is to determine whether the petitions cast doubt on the evidence of membership so as to require confirmation of that evidence by means of a representation vote. In making this determination the Board is concerned, primarily, with the question as to whether the petitions were signed freely and voluntarily and truly represent the wishes of the employees. The fact that management may have intentionally set out to unduly influence the employees to sign petitions, contrary to the act, is only one facet of the problem. Management may, by its actions, influence employees unintentionally and quite by accident but if the Board is satisfied that the employees who signed the petitions were so influenced this may well be a decisive factor in determining the overall weight to be given the evidence of membership.'

See also *Rainbow Ready Mix* 63 CLLC 16,259
Inspiration Ltd. (1968) OLRB Jan. 982
Travaelaine (1970) OLRB Nov. 879
CDN. Moldings (1967) OLRB Nov. 743
Maclean Hunter (1967) OLRB Nov. 759

Hobart Bros. (1974) OLRB Feb. 85."

7. The Board has reviewed the evidence in this case and must conclude that the petition does not represent a voluntary expression of those who have signed it. In the circumstances of this case an employee might logically have concluded that management supported the circulation of the document and could become aware of the individual's choice. In regard to, *firstly*, the meetings between Mr. Wilson and Mr. Shaw both before and after the posting of the official notice; *secondly*, the granting of time off work to Mr. Williams and his return to the work location in street clothes, whereupon he circulated the document without apparent interference from the supervisory staff, and *thirdly*, the timing of the blackboard notice and the subsequent references by Mr. Wilson in his discussions with the petitioners to the improvements the company would be prepared to consider. None of these factors alone or taken together would support a finding of direct management interference, they would, however, cause an employee to logically suspect that the hand of management was present in the circulation of the statement in opposition to the union. Having regard to the "responsive" nature of the employer/employee relationship the Board must find therefore that in these circumstances the freedom of expression has been effectively thwarted. The Board must conclude that an employee might well have signed the statement out of fear that failure to do so would jeopardize his employment or out of an attempt to ingratiate himself with his employer rather than out of genuine opposition to the trade union.

8. The Board is satisfied on the basis of all the evidence before it that more than fifty-five per cent of the employees of the respondent in the bargaining unit at the time the application was made, were members of the applicant on March 22, 1976, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

9. A certificate will issue to the applicant.

1896-75-U Pigott Construction Limited,(Applicant) v. C. W. Howard,
 United Association of Journeymen and Apprentices of the Plumbing and
 Pipe Fitting Industry of the United States and Canada, Local Union No. 46.
 A. Reinert, G. Goetz, T. Moase, D. Pasley, R. Gemmill, F. Batstone, C.
 Herder, K. Herder, and J. Coghlin, (Respondents).

S123 – Strike – Effect of applicant engaging in provocative conduct as to the assignment of certain work – Board granting interim order and directing further hearing.

BEFORE: R. A. Furness, Vice-Chairman, and Board Members H.J.F. Ade and E. Boyer.

APPEARANCES: *S. C. Bernardo and L. Howes appearing for the applicant; L. C. Arnold and W. Howard appearing for the respondents.*

DECISION OF THE BOARD: April 5, 1976

1. This is a complaint under section 123 of The Labour Relations Act, wherein the applicant applies for relief under section 123 of The Labour Relations Act.
2. The evidence establishes that the applicant is the general contractor on the expansion of the Humber Memorial Hospital in Metropolitan Toronto (hereinafter referred to as "the project") and that English and Mould Limited (hereinafter referred to as "E & M") is the mechanical sub-contractor on the project. E & M is bound by a collective agreement between the Mechanical Contractors Association of Toronto and the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union No. 46 (hereinafter referred to as "Local 46"). This collective agreement is effective from May 1, 1975, until April 30, 1977, and covers the project. The respondents A. Reinert, G. Goetz, T. Moase, D. Pasley, are plumbers, steamfitters and welders employed by E & M and are covered by this collective agreement with respect to this project.
3. The applicant is bound by a collective agreement between The General Contractors' Section of The Toronto Construction Association and the Labourers' International Union of North America, Local Union 506 (hereinafter referred to as "Local 506") which became effective on August 5, 1975, and remains in effect until July 31, 1977. The applicant does not have a collective agreement with Local 46.
4. Commencing on March 24, 1976, up to and including the date of this hearing on April 2, 1976, the plumbers, steamfitters and welders in the employ of E & M have not reported for work at the project although work has been scheduled for them. The Board finds that these plumbers, steamfitters and welders did not report for work on these days as a result of the instructions of the respondent William Howard, who is the business manager of Local 46.
5. The Board finds that the respondents A. Reinert, G. Goetz, T. Moase, D. Pasley, R. Gemmill, F. Batstone, C. Herder, K. Herder and J. Coghlin engaged in an unlawful strike and that having regard to section 88(2) of The Labour Relations Act, the acts, in all the circumstances, of C.W. Howard as an officer, official or agent are deemed to be the acts of Local 46. The Board further finds that Local 46 called or authorized or threatened to call or authorize an unlawful strike and that C. W. Howard and Local 46 counselled or procured or supported or encouraged an unlawful strike or threatened an unlawful strike.
6. The Board is satisfied that the conditions necessary to the exercise of its jurisdiction under section 123 of The Labour Relations Act have been established.
7. In this application, there is for consideration the exercise of the discretion of the Board in the circumstances of the conduct of the applicant. This unlawful strike arises out of the conduct by the applicant relating to the assignment of certain work. The evidence establishes that the attitude of the applicant towards Local 46 is designed to be punitive and provocative. The assignment of certain work by the applicant was intended to punish Local 46 for its position on the movement of equipment on the project. In particular the conduct of a solicitor for the applicant on February 13, 1976, towards Local 46 was designed to foment antagonism by Local 46 and to practically ensure an unlawful strike. Mr. Howard and representatives of other trade unions presented themselves at the offices of the solicitors for the applicant with a view to discussing the assignment of certain work. In return for this re-

sponsible attitude a solicitor for the applicant refused to discuss the assignment of work and stated "we knew it was facetious and we knew it would bring you out of the woodwork". Such an attitude on behalf of the applicant is not conducive to harmony on the project. However, while the Board does not condone the conduct by the representatives of the applicant, it is not prepared at this time to excuse the conduct of the respondent. In our view, the appropriate conduct for Local 46 would be the seeking of a direction under section 81(1) of *The Labour Relations Act*.

8. However, in making the direction set forth in paragraph nine herein, the Board is of the opinion that, because of the conduct of the applicant, this direction should be subject to the review of the Board pursuant to section 95(1) and 123 of *The Labour Relations Act* at a hearing on April 26, 1976. At that time the Board will hear evidence and will entertain motions to affirm, vary or revoke the direction set forth in paragraph nine herein. The applicant can make much greater effort towards maintaining the continuance of work on the project.

9. The Board directs that:

- (a) the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union No. 46, its officers, officials, agents or representatives or any persons acting on their behalf, under their instructions or any other person having notice or knowledge of this direction, cease and desist from:
 - (i) calling, authorizing or threatening an unlawful strike at the Humber Memorial Hospital project in Metropolitan Toronto,
 - (ii) doing any act which is likely to cause persons at the Humber Memorial Hospital project in Metropolitan Toronto to engage in an unlawful strike,
 - (iii) ordering, aiding, abetting, counselling, procuring or encouraging in any manner whatsoever, either directly or indirectly, any person to commit the calling, authorizing or threatening an unlawful strike at the Humber Memorial Hospital project in Metropolitan Toronto.
- (b) that the respondent C. W. Howard or any person acting on his behalf or under his instruction or any person having notice or knowledge of this direction, cease and desist from:
 - (i) counselling, procuring, supporting, encouraging or threatening an unlawful strike at the Humber Memorial Hospital in Metropolitan Toronto,
 - (ii) doing any act which is likely to cause persons to engage in an unlawful strike at the Humber Memorial Hospital project in Metropolitan Toronto,

(iii) ordering, aiding, abetting, counselling, procuring or encouraging in any manner whatsoever, either directly or indirectly, any person to commit the calling, authorizing or threatening of an unlawful strike at the Humber Memorial Hospital project in Metropolitan Toronto.

(c) that A. Reinert, G. Goetz, T. Moase, D. Pasley, R. Gemmill, F. Batstone, C. Herder, K. Herder, and J. Coghlin cease and desist from engaging in or threatening an unlawful strike.

10. The Registrar is directed to list this matter for continuation of hearing on April 26, 1976.

1671-75-R United Electrical, Radio and Machine Workers of America (UE), (Applicant) v. **Trench Electric Limited**, (Respondent) v. Group of Employees, (Objectors).

Petition – Where resolution of bargaining unit disputes may result in the petition not having sufficient overlap to result in a vote being conducted – Whether the Board will enquire into the validity of the petition before the unit is settled – Effect of S6(1a) – Whether petitions obtained by distributing blank forms and having employees place them in a “ballot box” can meet the Board’s evidentiary requirement as to the circumstances in which the signatures were obtained.

BEFORE: Kevin M. Burkett, Vice-Chairman and Board Members J.D. Bell and E. Boyer.

APPEARANCES: *R. Russell and W. Lucas for the applicant; M. G. Mitchnick, B. Simpson and R. Kernohan for the respondent; Douglas C. Mayne, Robert J. Mayne and Gord Emberley for the objectors.*

DECISION OF THE BOARD: March 5, 1976

3. The parties were in disagreement as to the inclusion of the Quality Assurance staff within the appropriate bargaining unit. The respondent argued that neither the supervisor nor his subordinate share a community of interest with those in the production unit and that in addition the supervisor exercises managerial authority pursuant to section 1(3)(b) of the Act and that accordingly they should be excluded from the bargaining unit. The applicant argued that the Quality Assurance staff shares a community of interest with those in the Production Unit and that the supervisor does not exercise managerial function within the meaning of section 1(3)(b) of the Act and that accordingly they should be placed within the bargaining unit. The Board appoints Mr. B. Abes, Labour Relations Officer to inquire into the duties and responsibilities of the Quality Assurance staff supervisor and in addition to inquire as to whether there exists a community of interest between the Quality Assurance staff and all employees of the respondent company in Markham, save and except foremen, those above the rank of foreman, engineering, office and sales staff. The Board further directs that Mr. Abes report the results of his inquiries to the Board.

4. The Board was in receipt of a number of signed statements in opposition to the union in this matter which may or may not materially affect the membership position of the applicant depending on the resolution of the bargaining unit dispute. If both of the Quality Assurance staff are determined to be within the bargaining unit the statements of desire in opposition to the union could, if it is established that they represent a voluntary expression, cast sufficient doubt upon the membership evidence as to require the taking of a representation vote. If, on the other hand, one or both of the Quality Assurance staff are determined to be outside the scope of the bargaining unit then there would not be sufficient overlap as between the membership evidence and the statements in opposition as to reduce the union's membership position below 55% and thereby require a representation vote. In the latter situation the Board does not conduct an inquiry into the origination and circulation of the statements of desire because such an inquiry would be a meaningless exercise in the face of the union's unalterable right to outright certification.

5. Mr. R. Russell, appearing on behalf of the applicant, argued that in the circumstances of this case the Board should inquire as to the origination, preparation and circulation of the statements in opposition regardless of the fact that subsequent to the resolution of the bargaining unit dispute there might not be sufficient overlap to materially affect the union's right to certification. He argued that the intent section, 6(1a), was to obviate delay occasioned by bargaining unit disputes and that the Board in the face of this recent amendment should immediately conduct its inquiry and if the voluntariness of the documents in opposition to the union is not proven, certify the applicant pursuant to section 6(1a) of the Act. The parties agreed that the Board should commence its usual inquiry with respect to the origination, preparation and circulation of the statements of desire in opposition to the union.

6. Form 5, *Notice to Employees of Application For Certification and of Hearing*, which was posted at the respondent company's place of business details certain pre-requisites of form and time which must be met if the Board is to accept a statement of desire. In addition, paragraph 7 of Form 5 clearly outlines the Board requirements with respect to the first hand testimony required in support of a statement of desire in accord with Rule 48(5) of the Board's Rules of Procedure. Paragraph 7 of Form 5 states:

"Any employee, or group of employees, who has informed the Board in writing of his or their desire in accordance with paragraphs 4 and 5 may attend and be heard at the hearing in person or by a representative. Any employee or representative who appears at the hearing will be required to testify, or produce a witness or witnesses who will be able to testify from his or their personal knowledge and observation, as to (a) the circumstances concerning the origination of the material filed, and (b) the manner in which each of the signatures was obtained.

EXPLANATORY NOTE: Where employees fail to attend in person or by a representative or to testify or produce witnesses to testify as provided in paragraph 7 above, the Board normally does not accept the statement of desire as casting doubt on the evidence or membership filed by the applicant."

7. Mr. Gordon Emberley appeared before the Board to give first hand testimony in accordance with the requirements of Rule 48 of the Board's Rules of Procedure as set out in paragraph 7 of the *Notice to Employees*. It was his evidence that during the evening of February 17, 1976 he drafted and typed the preamble and the next morning xeroxed a number of copies of the statement in opposition to the union and placed them in envelopes and at lunch time that day, February 18, 1976, he distributed these among the employees giving a "handful" to petitioner number P1, a lead hand. A ballot box was set up in the lunch room and during the afternoon break employees returned the sealed envelopes containing the signed statements and placed them in the ballot box. It was Mr. Emberley's evidence that P1 placed a number of envelopes in the ballot box which was then sealed and subsequently delivered to the Board by Mr. Emberley in the company of P8, another lead hand, the next morning, February 19, 1976.

8. The rationale underlying the Board's requirements for first hand testimony in support of the voluntariness of the statements in opposition to the union is well stated in the *CCH Canadian Limited* case (1975) OLRB Rep. Jan. 19 wherein at paragraph 10 the Board stated:

"In certification cases the Board is called upon from time to time to consider documents filed by employees in opposition to the application. Very often these documents follow closely on the heels of evidence in support of the trade union executed by the very same people causing the Board to question the voluntary nature of the subsequent expression in light of the natural inclination of an employee to identify himself with the interest and wishes of his employer. This concern was capsulized in *Welders, Public Garage Employees, Local 8417 and Pigott Motors (1961) Ltd.*, (1962), 63 CLLC 16,264 where the Board observed:

There are certain facts of labour-management relations which this Board has, as a result of its experience in such matters, been compelled to take cognizance. One of these facts is that there are still some employers who, through ignorance or design, so conduct themselves as to deny, abridge or interfere in the rights of their employees to join trade unions of their own choice and to bargain collectively with their employer. In view of the responsive nature of his relationship with his employer, and of his natural desire to want to appear to identify himself with the interests and wishes of his employer, an employee is obviously peculiarly vulnerable to influences, obvious or devious, which may operate or impair or destroy the free exercise of his rights under the Act. It is precisely for this reason, and because the Board has discovered in a not inconsiderable number of cases, that management has improperly inhibited or interfered with the free exercise by employees of their rights under the Act, that the Board has required evidence in a form and of a nature which will provide some reasonable assurance that a document, such as a petition, signed by employees purporting to express opposition to the certification of a trade union truly and accurately reflects the voluntary wishes of the signatores. (See *Canadian Labour Law Reporter*, 1955-59, the *Fleck Manufacturing Ltd. Case*, *CCH Canadian Labour Law Reporter*, vol. 1, 16,236, at p. 13,201).

Therefore because employees are peculiarly susceptible to influence by an employer the Board requires the first hand evidence of both the origination and circulation of the petition as outlined in Rule 48. Only when this evidence is forthcoming is the Board in a position to determine that the statements of desire are an accurate reflection of the wishes of the employees who have signed them. In fact, the Board has been so conscious of the considerations outlined in *Piggott Motors (1961) Ltd.*, *supra*, that it has placed great significance upon the custody of the petition throughout the period when it is being signed. If the custody cannot be substantially documented by direct evidence through this period the Board will not attach any weight to the document; (see *Vered and Harvey Company Limited* (1971) OLRB Nov. 736 and *Formosa Spring Brewery* (1974) OLRB Sept. 604)."

9. In the matter before the Board there is no evidence with respect to the circumstances under which any of the signatures were affixed to the documents. Even if we were to assume, which in the absence of direct evidence we are not prepared to do, that the employees who were given single envelopes signed the enclosed statement of their own free will and returned the envelope to the ballot box, we are left with an ominous gap in the evidence as it relates to the "handful" of envelopes taken and returned by P1. P1 did not appear before the Board to testify and therefore we do not know which of the statements he placed in the box and the circumstances under which the signatures were affixed to these statements. Having regard to the purpose for which the Board requires the first hand testimony as set out in paragraph 8 of this decision the Board must find that the failure of the objectors to adduce evidence with respect to the circumstances surrounding the signing of each document is a fatal omission. The voluntariness of the statements has not been proven, (see *Phillips Electronics Industries Ltd.* case (1974) OLRB Rep. Nov. at page 759) and therefore the Board must set the documents aside and find that they do not materially affect the membership evidence submitted by the applicant.

10. The Board is satisfied on the basis of all of the evidence before it that the dispute as to the composition of the bargaining unit cannot affect the applicant's right to certification. More than fifty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant on February 19, 1976, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

11. Accordingly the applicant is certified under the provisions of section 6(1a) of the Act as the bargaining agent for all employees of the respondent company in Markham save and except foreman and those above the rank of foreman, engineering, office and sales staff.

12. A formal certificate must await the final bargaining unit determination.

1671-75-R United Electrical, Radio and Machine Workers of America (UE), (Applicant) v. **Trench Electric Limited**, (Respondent) v. Group of Employees, (Objectors).

Petition – Reconsideration – Whether the Board has the onus to investigate the voluntariness of a petition – Effect of petitioners not producing witnesses’ as to how each of the signatures were obtained – Whether evidence as to how envelopes containing petitions were obtained can meet requirement of evidence as to how signatures obtained.

BEFORE: Kevin M. Burkett, Vice-Chairman and Board Members J.D. Bell and E. Boyer.

DECISION OF THE BOARD: April 2, 1976

1. The Board is in receipt of a letter from the representative of the objectors in this matter dated March 3, 1976 and confirmed by a letter dated March 16, 1976 requesting the Board to reconsider its decision in this matter dated March 5, 1976.
2. There are four reasons set out in support of the request for reconsideration. These are:
 - (1) The evidence of the missing employee went to forged or fraudulent petitions which is a matter of inquiry for the Board whereby the Board assumes jurisdiction to subpoena witnesses (as it does when there is an inquiry into Form 8), accordingly the evidence which could be provided by this missing employee was always available to the Board.
 - (2) The petitioners satisfied the Form 5 requirements on a normal reading of those requirements, the Board cannot require evidence which goes beyond that required by Form 5 unless it gives the petitioners proper notice and opportunity to call that evidence.
 - (3) The Board has placed a heavier burden on the petitioners in the present case to satisfy the Board that there was no management interference than is placed in the normal case of an open petition since the possibility of management interference which could enter in a gap in the present case is far more remote than the possibility of management interference which could enter in a gap in the normal case of the open petition. The petitioners were surprised by this change in Board policy thereby creating a proper case for an adjournment.
 - (4) The Board, by not hearing the evidence of the petitioners’ remaining witness did not appreciate the great lengths that the petitioners went to in order to obtain voluntary choices by the employees.
3. The evidence of the missing lead hand and indeed the deficiencies in the evidence of Mr. Emberley went not to forgery or fraud but to the voluntariness of the individual statements of desire filed in opposition to the application. Mr. Emberley was not present when the individual employees signed the statements of desire and therefore could not testify as to how each of the signatures was obtained but only as to the manner in which each

of the envelopes was obtained. The failure of the lead hand P1 to appear also relates to the voluntaries of the documents and not to fraud or forgery. The Board is inherently suspicious of the voluntary nature of statements of desire which have been circulated by persons exercising even limited managerial authority and has held that where such a person is known by the employees in the bargaining unit as capable of affecting their employment relationship the statement does not reflect the voluntary wishes of the employees who sign it. (See *Link Manufacturing Ltd.* case (1954) Board File No. 48682-53-R, *Leamington Vegetable growers Co-operative Limited* case (1974) OLRB Rep. June 402). The onus of proving the voluntariness of the statements must be discharged through the oral testimony of those who witnessed the signatures and the onus of making witness available to support the voluntariness of the statements rests with the objectors and not with the Board as suggested by the objectors. (See *Sentry Stores* case (1968) OLRB Rep. 849, *Willow Press* case (1971) OLRB Rep. Feb. 59 and *Formosa Spring Brewery* case (1974) OLRB Rep. Oct. 696).

4. The objectors did not satisfy the Form 5 requirements on a normal reading of those requirements. The objectors adduced evidence as to the manner in which each of the envelopes was obtained and not evidence of the manner in which each of the signatures was obtained (i.e. exact time and place, persons present etc.). It is difficult to conceive how, in the context of a certification proceeding, the objectors could read Form 5 as requiring only evidence of the manner in which the envelopes were obtained and not evidence of the manner in which each of the signatures was obtained on the statement within the envelopes. If the objectors were unsure as to the exact requirements of the notice it was incumbent upon them to seek advice (which they did) particularly in light of their admitted novel approach and the explanatory note which appears on Form 5. The Board assumes that the representative of the objectors was aware, or could easily have made himself aware, of the precise meaning which attaches to the requirements of paragraph 7 by a cursory reading of the pertinent section of "*Ontario Labour Relations Board Practice*" (Sack and Levinson, Butterworths 1973) the standard text and reference to Board practice and jurisprudence. Sack and Levinson state at page 105 and cite a number of Board decisions in support thereof:

"...each signature on the petition (referred to by number to prevent disclosure of the name) must be identified by a person who saw or was present at the signing; where a signature is not so identified it may be discounted, and, if only a small portion is identified, the whole petition may be lessened in weight."

5. The Board did not in this case require evidence which went beyond that which it requires in all such cases. The Board has applied the same onus in this case as it applies in all such cases and that is the onus to prove on the balance of probabilities that the statements are a voluntary expression of those who have signed them. Counsel for the objectors implies in his third reason for reconsideration that the question of voluntariness relates only to overt management interference. On the contrary, the question of voluntariness relates to the state of mind of the employees at the time the document is signed and as a result the Board looks beyond overt management interference and takes into consideration tacit management behaviour which in the normal course would cause an employee to suspect that management supported or approved the circulation of the statement (or the taking of a "secret" vote) and might therefore become aware of the individual's choice. In such circumstances, having regard to the nature of the employer/employee relationship as set out in paragraph 8 of the Board's earlier decision, the Board considers the statement not to be a

voluntary expression of those who signed it. (See *Morgan Adhesives of Canada* case (1975) OLRB Rep. Nov. 813 and the cases cited therein). In the instant case the conducting of the vote by two lead hands, on company premises during the working day, could have caused employees to suspect that management supported the Procedure and consequently fear that management might become aware of their individual choices. In these circumstances the Board must have before it evidence of the manner in which each signature was obtained if it is to make a finding of voluntariness. It was incumbent upon the objectors to prove that there was neither overt or tacit management interference. This onus is no different than that which falls to the objectors in any certification hearing. It does not represent a "change in Board policy which would necessitate the granting of an adjournment."

6. The Board would note at this point that it was not until after the applicant moved a non-suit in this matter and the Board had commented on the unsatisfactory testimony of Mr. Emberley that a request was made for an adjournment in order to enable the lead hand P1 to appear before the Board. The Board does not grant adjournments nor will it reconsider a decision for the purpose of permitting a party to repair the deficiencies of its case where the deficiency is caused by the non-appearance of a witness who could have been subpoenaed by the party requesting the adjournment. If such were the practice certification proceedings before the Board would be interminable with resultant prejudice to the applicant trade union and its constituent employee. In the circumstances of this case even if the Board were to have granted an adjournment or were to reconsider its decision on the basis of not having granted an adjournment, the testimony of the lead hand P1 could not cure the fatal deficiencies in the testimony of Mr. Emberley.

7. The Board must make a finding of voluntariness based on the evidence before it and as stated, critical to such finding is evidence as to the manner in which each of the signatures was obtained on the statements of desire. Subsequent to the Board commenting on the deficiencies of Mr. Emberley's testimony and refusing to grant an adjournment to enable the lead hand P1 to appear, the objectors proposed calling another witness. The Board asked the representative of the objectors the facts which he hoped to establish through the evidence of the additional witness. The proposed witness had no first hand knowledge of the manner in which the signatures were obtained. The Board has held that even if the objectors firmly established the facts which they hoped to establish through this witness the voluntariness of the petition would still not be proven and the membership evidence submitted by the applicant would still not be materially affected.

8. Having regard to all of the foregoing the Board denies the request for reconsideration.

1671-75-R United Electrical, Radio and Machine Workers of America (UE), (Applicant) v. **Trench Electric Limited**, (Respondent) v. Group of Employees, (Objectors).

Petition – Witnesses – Reconsideration – Whether handing employees blank petitions and having them later deposit them, in a sealed envelope, in a “ballot box” meets the Boards requirement of evidence of the voluntary nature of the petition – Whether the Board will grant an adjournment to allow a witness to a petition to be subpoenaed were the witness could have been subpoenaed in the first place.

BEFORE: Kevin M. Burkett, Vice-Chairman and Board Members J.D. Bell and E. Boyer.

DECISION OF THE BOARD: April 2, 1976

1. The Board is in receipt of a letter from Counsel for the respondent company in this matter dated March 15, 1976 in which the respondent indicates its support for the objectors' request for reconsideration on the grounds:

- (1) That the statements of desire filed by the objectors, together with the evidence adduced by the objectors, cast sufficient doubt on the Union's membership evidence that a representation vote ought to be ordered; and in the alternative,
- (2) That the hearing ought to have been adjourned to permit the Board or the objectors to adduce any additional evidence which the Board felt it required.

2. Having regard to the first ground for reconsideration raised by the respondent and the argument in support thereof as set out in the letter of March 15, 1976, the Board reiterates that the statements of desire in the circumstances of this case do not cast sufficient doubt on the membership evidence submitted by the applicant as to cause the Board to order a representation vote. The Board is satisfied pursuant to Section 7(2) of the Act that more than fifty-five per cent of the employees in the bargaining unit were members of the trade union as of the terminal date of this application. Furthermore, there is no evidence before the Board which would cause the Board to question the voluntary nature of the membership evidence let alone make a finding in this regard. There have been no charges filed in this matter alleging that the membership evidence in support of this application was obtained by means of intimidation or coercion. Counsel for the respondent argues that the Board should be concerned over the voluntariness of the union support because of the fact that although no employees would sign an open petition in opposition to the union, a number of employees did express opposition to the union in the “secret ballot”. In the absence of probative evidence the Board is not prepared to draw the inference suggested by the respondent. The reluctance of the employees to sign an open petition in opposition to the union just as easily supports an inference of continued support for the applicant union thereby requiring that those seeking to “cast doubt” on the membership evidence by means of the subsequent “secret ballot” satisfy the onus which attaches in all such cases of proving on the balance of probabilities that the statements in opposition to the union represent a voluntary expression.

3. The argument by counsel for the respondent that the objecting employees adopted an “imaginative approach to petitions which had the effect of providing the Board with statements of desire in the form contemplated by the Board’s regulations, while at the same time attempting in home-made fashion to approximate the Board’s process of a secret ballot,” in no way lessens the onus of establishing by first hand oral evidence the voluntariness of those statements. In point of fact, however, the approach of the objectors did *not* approximate the Board’s process of a secret ballot. *Firstly*, the evidence establishes that approximately two hours elapsed between the time when the employees were given ballots and the time when those ballots were placed in the ballot box; *secondly*, the evidence establishes that the lead hand of the company referred to as P1 in the decision of the Board dated March 5, 1976, was given a “handful” of ballots and later returned to place a number of sealed envelopes in the ballot box; and *thirdly*, the Board through its offices guarantees that the choice of the individual employee will not become known to the employer. The objectors, regardless of their approach, are not in a position to offer such a guarantee and in fact the very holding of such a vote on company premises, during the working day might cause the employees to fear that the employer would become aware of their individual choices thereby thwarting freedom of expression. It follows that the objectors in this case must satisfy the Board’s requirements with respect to the voluntariness of the statements having regard to the rationale underlying these requirements as set out in paragraph 8 of the Board’s earlier decision.

4. The *Notice to Employees of Application for Certification* (see paragraph 6, earlier decision) stipulates that the objectors must produce witnesses who will testify from personal knowledge as to:

- (a) The circumstances concerning the origination of the material filed, and
- (b) the manner in which each of the signatures was obtained.

The Board in conducting its inquiry into the nature of the petition asks each witness, *as a matter of standard procedure*, to identify the signatures which he has witnessed and to recount to the Board the manner (time, place, persons present etc.) in which each was obtained. The Board must assure itself that the circumstances are not such as to impair the freedom of expression. In the instant case Mr. Emberley had no knowledge of the circumstances under which any of the signatures were obtained having distributed envelopes during the lunch break and having seen these envelopes returned some two hours later. There is no evidence before the Board as to that which transpired in the interim. Although Mr. Emberley testified as to the manner in which the *envelopes* found their way to the Board this should not be confused with the required testimony with respect to the manner in which each of the *signatures* was obtained. Furthermore, the lead hand, numbered P1, who took the “handful” of ballots did not appear to testify. The Board is inherently suspicious of the voluntary nature of a petition which is circulated by someone exercising even limited managerial authority. The Board has held that where such a person circulates a petition and is known by the employees in the bargaining unit as capable of affecting their employment relationship, the petition does not reflect the voluntary wishes of the employees who sign it. (See *Link Manufacturing Ltd.* case OLRB M.R. (1954) File No. 48682-53-R, *Leamington Vegetable Growers Co-operative Limited case* (1974) OLRB Rep. June 402). The lead hand numbered P1 did not appear to testify. There is no evidence placed before the Board there with respect to the manner in which the signatures appearing on those ballots returned by

the lead hand P1 were obtained, just as there was no evidence placed before the Board with respect to how the other signatures were obtained.

5. The decision of the Board which the respondent asks be reconsidered was not one which resulted from the Board "making assumptions in favour of the union" as alleged by counsel for the respondent but rather it followed from the failure of the objectors to discharge the onus of proving that the statements in opposition to the union were a voluntary expression of those who signed them. The Board rejects the request for reconsideration on the grounds that "it is difficult to see how the Board can be 'satisfied' that the union has the required membership support to make the holding of a representation vote unnecessary." Having regard to the fact that the union submitted bona fide membership evidence on behalf of 80 per cent of those in the appropriate bargaining unit and having regard to the failure of the objectors to satisfy the onus which falls to them the Board is satisfied that the union has the required membership support.

6. The second ground for reconsideration raised by the respondent is supported by a two-pronged argument: *firstly* that Mr. Emberley's testimony reasonably satisfied the requirements as set out in the notice to employees and *secondly* that the Board should have granted an adjournment to allow the lead hand numbered P1 to appear before the Board and the failure of the Board to grant an adjournment constituted a denial of natural justice.

7. Mr. Emberley testified as to how the envelopes came to be contained in the ballot box. Counsel for the respondent argues that his testimony satisfies the Board requirements as set out in the notice to employees because his testimony revealed the manner in which he obtained each of the signatures, i.e. in sealed envelopes placed in a ballot box. With all due respect to counsel for the respondent it is difficult to conceive how, in the context of a certification proceeding the objectors could read Form 5 as requiring only evidence of the manner in which the envelopes were obtained and not evidence of the manner in which each of the signatures was obtained on the statements within the envelopes. If the objectors were in doubt as to the requirements of paragraph 7 it was incumbent upon them to seek advice (which they did) particularly in light of their admitted novel approach and the explanatory note which appears on the Form 5. The Board assumes that the representative of the objectors was aware or could easily have made himself aware of the precise meaning which attaches to the requirements of paragraph 7 by a cursory reading of the pertinent section of "*Ontario Labour Relations Board Practice*" (Sack and Levinson, Butterworths 1973) the standard text and reference to Board practice and jurisprudence. Sack and Levinson state at page 105, and refer to a number of Board decisions in support thereof:

"...each signature on the petition (referred to by number to prevent disclosure of the name) must be identified by a person who saw or was present at the signing; where a signature is not so identified it may be discounted, and, if only a small portion is identified, the whole petition may be lessened in weight."

The meaning which the Board placed on paragraph 7 of the notice in this matter is the standard meaning as applied by the Board in all such cases. It is the meaning which follows from a reading of the notice as a whole taken in the context of a certification proceeding.

8. Counsel for the respondent has alleged a denial of natural justice because of the refusal of the Board to grant an adjournment to the objectors in order to allow them the opportunity to adduce additional evidence as required by the Board. The Ontario Court of Appeal dealt with the refusal of the Board to grant an adjournment in a certification proceeding (albeit under different circumstances than presently before us) in the *Nick Masney Hotel Ltd.* decision 70 CLLC 14,020 wherein Laskin J.A. stated:

“This Court cannot say, as Addy, J. could not say, that the refusal of an adjournment to the employer in the present case amounted to a denial of natural justice. The Ontario Labour Relations Board deals in certification matters with fluid situations which cannot be judged by the more leisurely standards that operate in the prosecution of a claim for damages for a tort or for a breach of contract where the situation is fairly well frozen when the tort or the breach of contract has occurred. Expedition is important to a union, to employees and to an employer since the certification is merely the first step in an often laborious collective bargaining process.”

9. It was not until after the applicant moved a non-suit in this matter and the Board had commented on the unsatisfactory testimony of Mr. Emberley as regards the requirements of paragraph 7 of the Notice (Form 5), that a request was made for an adjournment. The representative of the objectors requested an adjournment so as the lead hand P1, who he stated had elected not to attend the hearing out of fear, could testify in support of the statements in opposition to the union. The Board reiterates that there were no charges filed in this matter and notes that it was open to the objectors to subpoena the lead hand P1 if they had so desired. The Board has ruled in a number of decisions that the onus of making witnesses available in these matters rests with the objectors. (See *Sentry Stores* case (1968) OLRB Rep. 849, *Willow Press* case (1971) OLRB Rep. Feb. 59, and *Formosa Spring Brewery* case (1974) OLRB Rep. Oct. 696). The Board does not grant adjournments nor will it reconsider a decision for the purpose of permitting a party to repair the deficiencies of its case where the deficiency is caused by the non-appearance of a witness who could have been subpoenaed by the party requesting the adjournment. If such were the practice certification proceedings before the Board would be interminable with resultant prejudice to the applicant trade union and its constituent members.

10. The Board denies that there has been a denial of natural justice. The objectors were served with proper notice, were represented at the hearing and were not adversely affected by circumstances beyond their control. (See *Nick Masney Limited* case (1968) OLRB M.R. Nov. 833, Dec. 965; 70 CLLC 14,010 (H.C.), 70 CLLC 14,020 (CA). The Board adopted its usual procedure and applied its standard test in these matters and in so doing the objectors' case was found to be deficient. The Board denies the request for reconsideration.

1829-75-U Windsor Electrical Contractors Association, (Applicant) v. Local Union 773, of the International Brotherhood of Electrical Workers, Neil McLean, (Respondents).

Arbitration – S123 – S112a – Where an arbitration application is filled after a Strike application – Whether the Board will delay hearing the strike application in order to hear both applications at the same time – Strike – Where the collective agreement provided under certain circumstances for a reduced number of hours in the work week – Whether a strike existed when the union unilaterally decided the circumstances existed and instructed its members to work the shorter number of hours.

BEFORE: R. A. Furness, Vice-Chairman.

APPEARANCES: *S. C. Bernardo and J.P. Wilson appearing for the applicant; Gerald B. Cooper and Neil McLean appearing for the respondents.*

DECISION OF THE BOARD: March 31, 1976

1. The applicant has applied to the Board for relief under section 123 of The Labour Relations Act.
2. The day before the application was due to be heard in Windsor, Local Union 773, of the International Brotherhood of Electrical Workers (hereinafter referred to as "Local 773") filed a grievance under section 112a of The Labour Relations Act. Local 773 in its grievance and at the hearing in this matter requested that the Board either entertain this application and the grievance at the same time or postpone entertaining this application until the merits of the grievance had been dealt with by the Board.
3. After considering the representations of the parties, the Board ruled that it would proceed with this application and that the grievance would be entertained at a subsequent date. This application was filed on March 12, 1976, and the respondents' reply and grievance were filed on March 24, 1976. It appears that the allegations which are cited in support of the grievance arose sometime prior to March 12, 1976. Proceedings before the Board which are commenced pursuant to either section 123 or section 112a of The Labour Relations Act are dealt with expeditiously under the Labour Relations Act and the Board's Rules of Procedure. Reference is made to section 112a(2) of the Act and sections 99 and 104 of the Rules of Procedure. However, there is nothing before it which persuades the Board to delay the hearing of the instant application. In entertaining this application on its appointed date of hearing, the Board is satisfied that there is no resulting prejudice to Local 773.
4. The applicant and Local 773 are parties to a collective agreement which became effective on May 1, 1975, and remains in effect until April 30, 1977. The collective agreement covers electricians and electricians' apprentices in Essex County. Article 800 of the collective agreement provides:

"800 Under all normal conditions, the hours of work shall be from 8:00 A.M. to 4:30 P.M. Monday to Friday, these hours can be changed to an eight (8) hour working day, 7:00 A.M. to 5:00 P.M. Monday to Friday upon mutual agreement between the Union and the Contractor."
5. In addition article 810 of the collective agreement provides:

“810 Shorter Work Week:

When work gets below normal and there is fifteen (15%) per cent or more of the Union members out of work, then the Joint Policy Committee will meet within twenty-four (24) hours excluding Saturdays, Sundays and Holidays to correct the unemployment situation by distributing the work available as equitably as possible amongst the members of the Union with no increase in wage rates. (emphasis supplied)”

6. The Joint Policy Committee (hereinafter referred to as “JPC”) is established by virtue of article 1601 of the collective agreement and provides:

“1601 Joint Policy Committee

The object of this Agreement is to establish fair working conditions and regulations for both the employer and the Union in the construction industry, and to maintain industrial peace.

In order that these objectives may be maintained and furthered, and that any differences that may arise between parties to this Agreement may be settled equitably and rapidly, and also to provide the means for better understanding and co-operation between the parties, a Joint Policy Committee shall be established. The Joint Policy Committee shall consist of four representatives of the Union and one alternate, and four representatives of the Employer and one alternate, and they shall elect a Chairman and Secretary from among themselves, and if necessary, and impartial referee suitable to both parties.

The Joint Policy Committee shall meet regularly at least once every three months, and more often if need be, to settle urgent matters and their duties shall be, but not limited to, attempting to settle trade disputes or grievances prior to arbitration procedure, to investigate and recommend methods to improve trade practices, efficiency and productivity and standards of workmanship within the industry and to constantly work for improvement of Labour Relations and the general betterment of the industry.”

7. The parties agreed that there is some unemployment among the membership of Local 773 in Essex County. However, the parties clearly differed over the meaning of “out of work” in article 810. Local 773 adopted an interpretation which viewed “out of work” as encompassing members who are not employed in Essex County. Such an interpretation by Local 773 includes as “out of work” those members who are employed in Sarnia, London, Douglas Point, or elsewhere. The applicant, on the other hand, interprets “out of work” as meaning members of Local 773 who are not employed regardless of location. This interpretation by the applicant regards members of Local 773 who are employed beyond the boundaries of Essex County as not being “out of work”.

8. Article 810 is an attempt by the parties to the collective agreement to correct an unemployment situation by distributing the work which is available as equitably as possible

upon the occurrence of the conditions set forth in this article. The Board does not intend to interpret article 810 in this proceeding since this article will undoubtedly command the attention of the Board when the grievance is heard. However, in passing, the Board notes that the applicant appeared on occasions to doubt the veracity of the claims of Local 773 concerning how many members were "out of work". The applicant was reluctant to have its members conduct their operations in a less efficient manner when it was not convinced of the genuineness of the position of Local 773 with respect to article 810. In addition, there appeared to be doubt by certain members of the applicant concerning whether the solution which was proposed by Local 773 would in fact result in increased employment of members of Local 773 within Essex County. Local 773, for its part, resisted requests by the applicant to provide a list of members who were "out of work". The respondent Neil McLean adopted the position that such a list was the private business of Local 773 and declined to provide such a list prior to the hearing of this application. In his testimony, Mr. McLean advanced an additional reason for not providing a list for the applicant. In his view, some of the members of the applicant would not hire certain members of Local 773 who appeared at the top of the list of those who were "out of work". At the hearing Mr. McLean provided a list in alphabetical order which contained the names of members who were regarded by Local 773 as being "out of work". It is difficult to understand why Local 773 did not provide such a list to the JPC prior to the hearing of this application.

9. The JPC did meet from time to time and during a meeting on June 16, 1965, there was some discussion concerning article 810. A representative of Local 773 on the committee made suggestions about the application of this article. At the conclusion of this meeting two of the committee's representatives on behalf of the applicant and one of the committee's representatives on behalf of Local 773 indicated that they would each give recommendations to the board of directors of the applicant and the executive board of Local 773 respectively with respect to the adoption of a thirty-two hour week. The Minutes of this meeting record that Mr. McLean asked the applicant's representatives to advise him of the board of directors' acceptance as soon as possible.

10. At a meeting of the JPC on October 28, 1975, there was further discussion of article 810 and its application. The minutes of this meeting record that Mr. McLean asked if a poll had been taken of the applicant's members regarding what would be acceptable in the way of a reduction of monthly hours. One of the representatives of the applicant on the committee advised that the applicant's representatives would call a meeting of its membership for the following day to offer the suggestion of Local 773 to them and stated that Mr. McLean would be advised after their meeting.

11. In a letter dated October 30, 1975, the president of the applicant advised its members and Mr. McLean that at a special meeting of the applicant the suggestion of Local 773 was approved with an amendment by the applicant. The relevant portion of this letter states:

"Local Union #773 of the I.B.E.W. suggestion was as follows:

'Local Union #773 have agreed to offer 120 hours per month and the Electrical Contractor give some consideration to the Employee requesting a Friday off'

Suggestion was discussed in depth and a motion accepting it was approved with an amendment that the suggestion be approved for the calendar months of November and December of 1975.

Mr. Neil McLean has been informed of the W.E.C.A. decision and has assured me that the amendment to the suggestion is satisfactory.

Trust you will plan your employee working schedule for the months of November and December 1975."

12. The Board finds that the parties to the collective agreement agreed to modify the hours of work which are set forth in article 800 for the months of November and December of 1975. By virtue of the provisions of section 44(5) of The Labour Relations Act, the parties to a collective agreement may revise any provision of a collective agreement by mutual consent other than a provision relating to its term of operation. The parties by their course of conduct modified article 800 of the collective agreement for these two months.

13. Towards the end of December of 1975 Thomas Howe, the manager of the applicant, repeatedly tried to arrange a meeting of the JPC with a view of holding discussions about the hours of work for the members of Local 773. To this end he contacted Mr. McLean. Mr. Howe was informed that Mr. McLean was too busy during December and it was not until January 3, 1976, that a meeting of the JPC was convened. During this meeting a representative of Local 773 made suggestions regarding the hours for members of Local 773 for January and February of 1976. One of the representatives of the applicant on the JPC advised the representatives of Local 773 on the JPC that these suggestions would have to be taken back to the membership of the applicant because as a representative of the applicant to the JPC, he did not have the authority to answer these suggestions with a yes or a no. It was announced at this meeting that these suggestions would be presented to the membership of the applicant on January 5, 1976, and that Mr. McLean would be advised by the president of the applicant.

14. The membership of the applicant did not accept these suggestions and this decision was communicated to Local 773. On January 5, 1976, Local 773 issued the following signed statement:

"Please be advised of the following information regarding the shorter work hours.

1. Effective January 5th, 1976, shorter work hours of 128 hours per month will take effect. If the employees reach an agreement with their employer that they may work a 32 hour work week (1 day off per week), this will be permitted.

2. Each overtime hour worked will be counted as 1 hour and credited to the man's hours in that month. Only overtime hours may be deferred to the following month but must then be credited against the 128 hours the worker is allowed to work in that month.

3. Vacation time will not be counted in the shorter work month hours and employees taking their remaining vacation time will be considered as if having worked those hours.

4. Hours worked outside the jurisdiction of Unit 1 will not be counted under the shorter work hours.

5. This will take effect in the months of January and February and to be reviewed on February 28th, 1976.

“N. McLean”

15. On January 12, 1976, the applicant in a letter to Local 773 reiterated its position that the suggestions of Local 773 regarding hours of work for the membership in Essex County in January and February were not acceptable to the applicant. The letter advised Local 773 that the members of the applicant would be working by the collective agreement for the month of January 1976 and following months unless a mutual agreement was made to change the working hours.

16. Local 773 held a special meeting of its membership on February 28, 1976, to consider article 810 of the collective agreement and a shorter work week. On March 5, 1976, Local 773 issued the following written statement to its membership:

“TO ALL WINDSOR
‘A’ MEMBERS ON CONSTRUCTION

Dear Sir and Brother:

As a result of a Special Called Meeting of February 28th, 1976, you are advised of the following information regarding the shorter work hours.

1. For the months of March and April, the shorter work week shall consist of 32 regular working hours per week.
2. Overtime hours will not be counted in the 32 hours, so no make-up time will be necessary.

The 32 hours per week must be strictly adhered to in the hope of placing some of our unemployed members to work.

I remain

Fraternally yours,

(Sgd.) Neil McLean

Neil McLean,

Business Manager,

L.U. 773, I.B.E.W.”

17. During 1976 and up to the hearing of this application on March 25, 1976, the members of Local 773 who are employed by members of the applicant in Essex County have obeyed the directions of Mr. McLean and Local 773 and have worked the shorter work week contrary to the provisions of article 800. During this period of time work has been scheduled and been available for such members. The Board notes in passing that there is among the membership of Local 773 a body of opinion which opposes the conduct of Local 773 regarding its unilateral action in directing a shorter work week. However, the evidence before the Board establishes that the membership of Local 773 have worked shorter work weeks because of the directions of Mr. McLean and Local 773.

18. Mr. McLean is the business manager of Local 773 and the Board finds that he is an officer, official or agent of Local 773 and that he was purporting to act within the scope of his authority in his conduct relating to this application. Pursuant to section 88(2) of The Labour Relations Act the Board finds that the conduct or acts of Neil McLean is deemed to be conduct or acts of Local 773.

19. Article 1601 and 810 provide a means for resolving issues which arise out of situations where members of Local 773 are out of work. Article 800 provides for the hours of work. Both parties to the collective agreement are required to work these hours of work under normal conditions. While it is permissible for the parties to the collective agreement to revise any provision of a collective agreement by mutual consent other than a provision relating to its term of operation, neither party may do so unilaterally.

20. The practice by the members of Local 773 of regularly absenting themselves from their employment in accordance with the instructions of Mr. McLean and Local 773 is a cessation of work, a refusal to work or to continue to work by employees in combination or in concert or in accordance with a common understanding and is a strike within the meaning of section 1(1)(m) of The Labour Relations Act. This strike occurred during the term of operation of a collective agreement which covers such employees and, having regard to the provisions of section 63(1) of The Labour Relations Act, is unlawful.

21. The Board is satisfied that Local 773 has called or authorized or threatened to call or authorize an unlawful strike and is further satisfied that Neil McLean; an officer, official or agent of Local 773; counselled or procured or supported or encouraged an unlawful strike or threatened an unlawful strike within the meaning of section 123(1) of the Labour Relations Act. The Board is further satisfied that the conditions precedent to the exercise of its discretion under section 123(1) exist in the circumstances of this application.

22. The applicant has approached the problems regarding hours of work and unemployment in a spirit of flexibility and has shown a willingness to attempt to arrive at a mutually acceptable solution with Local 773. The applicant during November and December of 1975 demonstrated a willingness to experiment with a revised schedule for hours of work. In addition, the applicant attempted to arrange a meeting with Local 773 on the schedule for hours of work before the expiration of the trial period at the end of December of 1975. This contrasts with the unilateral and unlawful conduct of the respondents.

23. Accordingly, the Board is prepared to exercise its discretion under section 123(1) of The Labour Relations Act and deems it appropriate to make the following direction:

- (a) that Local Union 773 of the International Brotherhood of Electrical Workers forthwith retract the instructions which have been given to the membership of Local Union 773 of the International Brotherhood of Electrical Workers to work thirty-two (32) hours per week for members of the Windsor Electrical Contractors Association in Essex County.
- (b) that Neil McLean business manager of Local 773 of the International Brotherhood of Electrical Workers, forthwith retract the instructions which have been given to the membership of Local Union 773 of the International Brotherhood of Electrical Workers to work thirty-two (32) hours per week for members of the Windsor Electrical Contractors Association in Essex County.
- (c) that Local Union 773 of the International Brotherhood of Electrical Workers forthwith notify each of its members that they are required to work forty (40) hours per week for members of the Windsor Electrical Contractors Association in Essex County unless otherwise specified by their employer or employers.
- (d) that Neil McLean, the business manager of Local 773 of the International Brotherhood of Electrical Workers, forthwith notify each of the members of Local 773 of the International Brotherhood of Electrical Workers that they are required to work forty (40) hours per week for members of the Windsor Electrical Contractors Association in Essex County unless otherwise specified by their employer or employers.
- (e) that Local Union 773 of the International Brotherhood of Electrical Workers, its servants, agents, officers, officials or anyone acting on its behalf cease and desist from ordering, requesting or directing members of Local Union 773 of the International Brotherhood of Electrical Workers to work a work week of less than forty (40) hours for members of the Windsor Electrical Contractors Association in Essex County unless the Windsor Electrical Contractors Association and Local Union 773 of the International Brotherhood of Electrical Workers mutually agree in writing.
- (f) that Neil McLean, the business manager of Local 773 of the International Brotherhood of Electrical Workers, or any person acting on his behalf, cease and desist from ordering, requesting or directing members of Local Union 773 of the International Brotherhood of Electrical Workers to work a work week of less than forty (40) hours for members of the Windsor Electrical Contractors Association in Essex County unless the Windsor Electrical Contractors Association and Local Union 773 of the International Brotherhood of Electrical Workers mutually agree in writing.
- (g) That Local Union 773 of the International Brotherhood of Electrical Workers and its business manager, Neil McLean, cease and desist from doing any act which results or may result in an unlawful strike by mem-

bers of Local Union 773 of the International Brotherhood of Electrical Workers who are employed by members of the Windsor Electrical Contractors Association in Essex County.

1394-75-R York University Faculty Association, (Applicant) v. **York University**, (Respondent) v. Osgoode Hall Faculty Association, (Intervener) v. Group of Employees, (Objectors) v. Professor Rein Peterson, (Employee) v. Professor William A. Jordan, (Employee)

Trade Union – Status – S1(1)(n) – Effect of faculty association admitting administrative personnel to membership – S12 – Effect of concessions granted by employer to association including dues deduction and use of facilities – Effect of past irregularities on decision as to status.

BEFORE: D. H. Kates, Vice-Chairman, and Board Members H. J. F. Ade and P. J. O’Keeffe.

APPEARANCES: *J. Sack and Prof. J. L. Granatstein for the applicant; D. F. O. Hersey, J. B. Noonan and W. Farr for the respondent; R. D. Weiler for the intervener; B. Lamb and Dr. D. Butler for the objectors, Prof. R. Peterson; Prof. W. A. Jordan.*

DECISION OF THE BOARD: January 26, 1976

1. At the outset of this application for certification the applicant was required to prove its status as a trade union as defined in section 1(1)(n) of the Act. After a year’s preparatory work the founding meeting of the York University Faculty Association took place on January 13, 1962. At that meeting a constitution was adopted and a fee structure was agreed upon. The purpose of the Association as recited in its constitution “shall be to promote the welfare of the University and its academic staff”. Professor Verney, the Association’s initial Vice-Chairman, advised the Board of the preliminary steps that were taken to form the Association and the nature of its concerns once established. He explained that the Association was formed almost concurrently with the establishment of the respondent as a University. At the respondent’s inception the small academic staff in addition to its teaching and research functions assumed sundry administrative responsibilities. For example, Professor Verney was appointed the first Dean of Atkinson College. In this capacity he was responsible for organizing the initial curricula of the college. As soon as the college was formally established his position as Dean was voluntarily terminated. It therefore did not surprise him to learn that a number of persons holding responsible administrative positions within the University appeared as members in the minutes of the Association. The meetings of the Association as reflected in these minutes indicated that the concerns of the Association at the beginning were geared towards the growth of the University as an institution of learning, the entrenchment of the Association within the University structure and the advancement of the membership with respect to salaries, tenure and other benefits.

2. The problems of establishing criteria for membership eligibility was a particularly thorny issue during the course of the Association’s short history. There is no dispute that

Deans, Associate Deans and other personnel performing "administrative" functions within the University from time to time were admitted to membership in the organization. Indeed, as late as May, 1975 Professor P. Beechey, Associate Dean in charge of Student Affairs, held executive office. Initially membership in the Association was open "to all full time members of the staff of the University engaged in academic work". Other members of the University were admitted to membership "by majority vote at the annual meeting or a general meeting of the Association...". The minutes of the general meeting on October 15, 1962 reflect some concern "regarding qualification (for membership) in terms of the relative obligations for teaching and administration". At that time proposed amendments of the constitution were postponed for further study. It is readily discerned however that the consensus of the meeting was that the Association be disposed to structure its membership qualifications primarily on the basis of full time faculty engaged in teaching and research pursuits. Associate or non-participant memberships "might" be open to those whose obligations were administrative and whose loyalties and interests were primarily concerned with financing University growth and similar administrative areas. At the Association's first annual meeting on November 14, 1962, the membership accepted the following as the definitive interpretation of its eligibility requirements:

"The following are eligible for membership; Professors, Associate Professors, Lecturers and Instructors who are engaged in full time teaching, research or direction of research."

3. Nevertheless difficulties continued with respect to determining eligibility requirements for membership and again proposals for amendment were submitted at the Association's second annual meeting on November 8, 1963. The disposition of the incumbent members appeared to be in favour of broadening the scope for eligibility. The proposals for amendment reflected a desire to admit part time faculty engaged in academic work and administrative staff "*provided they engaged in the academic instruction of students and hold no authority over members of the academic staff*". It is particularly noteworthy that the Association's attempts to broaden its membership requirements were consistent with its prime concern of preserving the academic persona of the organization. It is also significant that these proposals express a consciousness of separating "managerial" staff from the regular academic members. Curiously the members approved an amendment to the proposals deleting any reference to the restriction of membership to administrative staff who hold authority over other members of the academic staff. The amendment ultimately adopted and applied for sometime afterwards extended eligibility "to all full time members of the academic staff engaged in teaching, administration, research or the direction of research including professional librarians". Membership was opened to professional librarians in 1974. Part time members of the academic staff engaged in like capacities were also made eligible for membership subject to acceptance by vote of the Executive Committee.

4. It was explained to the Board at numerous intervals during the course of the hearing that Deans and other administrative personnel were only admitted to membership because their principal vocation at the University was teaching, research and other academic pursuits. Members of the University's administration such as the President and Vice-President were never eligible nor were they admitted to membership. It appears however that as the University grew in size so there occurred a commensurate growth in the membership of the Association. Persons who may have held administrative posts within the University most likely gained admittance to the organization on account of their teaching and research

responsibilities. From their particular perspective, they in having regard to their academic functions, would share a like identity with the other members "in promoting the welfare of the University and its academic staff".

5. Professor Harvey Simmons has been both a member and executive officer of the Association since 1971. He was Chairman of the Association during the period of 1974-75 when amendments of critical importance were incorporated into the Association's constitution. Professor Simmons related that "the main activity" of the Association in the past has been to act as bargaining agent on behalf of the academic staff in negotiating salaries and fringe benefits. Negotiations were carried on "at arms length" with the respondent's Board of Governors. These negotiations "were not always good and sometimes acerbic". Indeed, in recent bargaining an agreement with the respondent University was not reached and therefore a settlement was imposed by the President. These past quasi-bargaining sessions resulted in the Association and its executive staff gaining several employer benefits. Dues are deducted from the pay cheques of members unless authorization is voluntarily withdrawn by the employee, members of the executive are permitted to engage in Association business during working hours without deduction of salary and the respondent's premises and other facilities from time to time are allocated for Association use. In the spring of 1975, in obvious preparation for the filing of the instant application, amendments were added to the Association's constitution in order to assure its status as a trade union.

6. In March, 1975, the Association's objects clause was amended to read that "the purpose ... shall be to promote the welfare of the University as an institution of higher learning and the welfare of its academic staff, *including the regulations of employment relations between the University and its academic staff*". Of greater significance however was the amendment excluding from eligibility for membership "the President of the University, all Vice-Presidents ..., and all other such persons coming within the definition set out in section 1(3) of *The Ontario Labour Relations Act, as amended from time to time*". Ancillary to this amendment is the deletion of any reference to administrative staff whether engaged in academic pursuits or otherwise. As a result of these amendments numerous members including Professors Beechey and Peterson (Professor Peterson succeeded Professor Beechey to the post of Association Dean in charge of Student Affairs) resigned from the Association. It appears from the statements made by Professor Peterson that a number of these resignations were expressions of dissidence opposing the Association's efforts to become formally recognized as a trade union. Nevertheless, Professor Simmons confirmed that the objective of the amendments were to purge its membership of any managerial taint that may have unwittingly transpired during the course of the Association's development. As a result of these amendments, new membership cards were signed, (and submitted to the Board) by the members as confirmation of its status as an organization of employees for purposes of section 1(1)(n) of the Act.

7. The Board cannot attach serious consideration to the submissions made by counsel for the objectors in connection with the alleged prohibited status of the applicant Association having regard to the provisions of section 12 of the Act. The evidence remained uncontradicted that the concessions gained by the Association with respect to dues deduction, Association use of the respondent's facilities, etc. etc. were a product of "arms length" negotiations with the employer. Moreover, the nature of the relationship between the applicant and respondent betrays any intention of legitimizing the type of "sweetheart association" contemplated by the mischief of the Legislation as evidence by the settlement

recently imposed by the respondent's President. We cannot conclude, in the circumstances described herein that there exists any basis in fact to support the allegation that the Association should be viewed as a recipient of employer ... or other support and thereby should be prohibited from being treated as a trade union eligible for certification by this Board. (See: *The University of Ottawa* case OLRB M.R. September 1975 694 at p.695; *The Carleton University* case OLRB M.R. April 1975 308 at p.310).

8. The principal submission made by counsel for the group of objectors precluding the Board from finding that the applicant is a trade union for purposes of section 1(1)(n) is its past affiliation with administrative personnel who apparently exercise managerial functions within the meaning of section 1(3)(b) of the Act. In other words, the applicant Association cannot be treated as "an organization of employees" having regard to its past practice of admitting into membership (particularly Professor Beechey who actively participated in the Association as an executive officer) employees of a managerial caste. In support of his submissions counsel referred the Board to its decision in *The Hydro-Electric Power Commission of Ontario* case OLRB M.R. August 1971 at p.504-4. In that case, professional engineers employed by Hydro conducted a quasi-bargaining relationship with their employer through its Association. Upon removal of the legislative prohibition preventing professional engineers from being certified under the Labour Relations Act, this Association sought recognition as a trade union for purposes of section 1(1)(n) of the Act. The evidence was quite clear that a large segment of the dues paying membership were also members of management who as professional engineers associated with the organization in support of its objectives. Although managerial employees did not have a part to play with respect to bargaining for wages or working conditions, nevertheless the Board was influenced by the Association's candid admission that their membership policies "created some cause for a potential conflict of interest". Because of its concern for the integrity of the collective bargaining relationship as expressed in several provisions of the Act, the Board was constrained from concluding that the Association was "an organization of employees" for purposes of section 1(1)(n) of the Act. Rather, the Board found it was "an organization of both employees and persons exercising managerial functions".

9. Counsel for the applicant submitted that the applicant from the date of its formation as an Association qualified for status as a trade union for purposes of the Act. At no time prior to this application and during its co-existence with the employer as bargaining agent on behalf of the academic staff could the Association be viewed as tainted because of the composition of its membership. Any person who happened to hold an administrative position with the respondent were admitted to membership only because such administrative functions were incidental to their prime vocation as teachers and academics. The measures taken in the spring of 1975 to amend the Association's constitution merely confirmed the *status quo*. The fresh membership cards signed by the incumbent members ought to be treated as confirmation of the Association status notwithstanding the apparent technical irregularities of the past. (See: *The Gilbarco Canada Ltd.* case (1971) OLRB M.R. 155).

10. The issue before the Board is whether the applicant is a trade union for purposes of section 1(1)(n) of the Act at the material time the application was filed. Whether the applicant qualified as a trade union in the past is of no great consequence to the Board save to the extent it may be relevant to making a definite finding. We have perceived that during the course of its short history there were genuine measures taken by the applicant Association to set itself apart from the administrative processes of the respondent University. Nev-

ertheless from its inception the purpose clause of the Association made membership a desirable objective for a wide spectrum of academic employees (including administrative personnel) who were interested in contributing to the welfare of the University. We reject Professor Simmons' assertion that the main function of the Association was the maintaining of a quasi-bargaining posture with the respondent with respect to salaries and terms and conditions of employment. The minutes of the meetings of the Association simply do not reflect so self-centred an identity. For example, the minutes of the Association's general meeting dated October 15, 1962 reflect the concern of the membership "for the ultimate size and rate of growth of the University" emanating from the recommendations of the Deutsch Report. Professor Seeley is shown to have sponsored a motion advising that any proposals in regard to the growth and size of the University should not be adopted without official consultation with teaching faculties and their Associations. It is readily discernible that Deans, Associate Deans and other administrative personnel would share a like concern with other faculty members in responding collectively to the type of measures referred to in the minutes. It is accurate to say as well that these officials would also share a like concern for the more pedestrian problems raised in the minutes of the Association relating to salaries, pensions, tenure, promotion and allied issues. In other words, to the extent that Deans and Associate Deans, while members, "held authority over members of the academic staff" we are clearly of the view that "a potential for a conflict of interest" may have existed that would preclude the Board from finding the applicant to be "an organization of employees". Moreover we are fortified in reaching this conclusion in the face of the uncontradicted evidence that a member of management participated on the executive and thereby may be imputed to have assumed a policy making role in the organization.

11. Nevertheless does the evidence establish that "the potential for conflict" remained after the changes that were incorporated into the Association's constitution in March, 1975? The Board cannot conclude that these amendments were merely "window dressing" affirming the pre-existing *status quo*. The effect of these changes were substantive and had a far-reaching impact on some of the members. Professor Peterson's evidence is relevant in this regard. Through him we learned that Professor Beechey resigned. He also indicated that he personally resigned because of his opposition to the transformation of the Association into "a trade union". In other words, Professor Peterson confirmed the intentions of the Association as expressed by Professor Simmons in amending the membership requirements of the constitution. That is to say, the amendments in disqualifying persons "coming within the definition set out in section 1(3) of The Labour Relations Act ..." precipitated the resignations of members who would most likely prejudice the Association's claim for status as "a trade union". In the face of this development we cannot conclude as was the case in *The Hydro* case (*supra*) that the Association was composed of two categories of employees. On the contrary "the potential for a conflict of interest" that may have existed in the past was removed by virtue of the steps taken by the Association to remove from its ranks managerial persons. The Board therefore finds that the applicant as of the date of the filing of this application was "an organization of employees" within the meaning of section 1(1)(n) of the Act.

12. At the Board's hearing dated December 22, 1975, Professor William A. Jordan filled out an appearance sheet indicating that he was an employee affected by the outcome of any decision made by the Board in the disposition of this application. During the hearing Professor Jordan filed with the Board charges alleging wrongdoings committed by the applicant Association during the course of its organizational campaign. As a result of these alle-

gations he requests that the Board direct a representation vote conferring upon employees an opportunity to select the applicant as their exclusive bargaining agent. Counsel for the Association strenuously objected to the Board's consideration of these allegations, having regard to the stage in the proceeding when they were made. That is to say, counsel argued that the allegations were not filed with the dispatch necessary in accordance with section 47(2) of *The Board's Rules of Practice and Procedure*. The relevant provision of the Board's Rules reads as follows:

Section 47(2)

Where, in the opinion of the Board, a person has not filed notice of intention promptly upon discovering the alleged improper or irregular conduct, he shall not adduce evidence at the hearing of the application of such facts, except with the consent of the Board and, if the Board deems it advisable to give such consent, it may do so upon such terms and conditions as it considers advisable.

13. The background circumstances relating to the processing of this application are as follows. The application was filed on December 5, 1975 and the Registrar in the ordinary course notified the parties having set a terminal date and hearing date for December 16th and 22nd respectively. By letter dated December 12, 1975 and that arrived at the Board by the terminal date, Professor Jordan writes:

"Dear Sir:

In accordance with your reference Notice dated December 8, 1975, this is to advise you that I am an employee of York University and that I wish to make a representation to the Board at its Hearing on December 22, 1975 in opposition to the application of the York University Faculty Association for certification as bargaining agent of employees of York University.

Very truly yours,
William A. Jordan"

14. The Board cannot conclude from the foregoing information that Professor Jordan was in the least bit tardy in responding to the application upon notification by the Board through its *Notice To Employees of Application For Certification* (Form 5). Although there may have been some cause for confusion by virtue of the absence of particularity with respect to the nature of the representations Professor Jordan wished to make in opposition to the applicant, these shortcomings were cured as a result of the elaborate statement filed with the Board (copies of which were given the parties) amplifying the extent and nature of the alleged wrongdoings forming the subject matter of the changes. The Board is therefore of the opinion that Professor Jordan ought to be extended the opportunity to adduce evidence and make submission in support of the allegations contained in his written statement. The Registrar is directed to list this matter for hearing for the aforesaid purpose.

1394-75-R York University Faculty Association, (Applicant) v. York University, (Respondent) v. Osgoode Hall Faculty Association, (Intervener) v. Group of Employees, (Objectors) v. Professor Rein Peterson, (Employee) v. Professor William A. Jordan, (Employee) v. Professor D. McCormack Smyth, (Employee).

Reconsideration – S95(1) – Whether the Board will reconsider decision granting status to applicant – Effect of parties seek reconsideration having had ample opportunity to adduce evidence at first hearing.

BEFORE: D. H. Kates, Vice-Chairman, and Board Members H. J. F. Ade and P. J. O’Keeffe.

APPEARANCES: *J. Sack and Prof. J. L. Granatstein for the applicant; D. F. O. Hersey and W. D. Farr for the respondent; J. D. Wright for the intervener; B. Lamb for the objectors; Prof. R. Peterson; J. C. Murray for Prof. W. A. Jordan; B. W. Earle for Prof. D. McCormack Smyth.*

DECISION OF THE BOARD: April 6, 1976

1. This is an application for reconsideration filed by counsel for Professor W. A. Jordan requesting review of a Board finding that the applicant association is a trade union for purposes of section 1(1)(n) of the Act. A request for leave to be added as a party to these proceedings for the purpose of making submission on the propriety of the Board’s finding was also filed by Professor D. McCormack Smyth. As a result of the correspondence elaborating the grounds for review interventions were filed by a number of professors, presumably affected by YUFA’s application for certification, supportive of these applications for reconsideration. For example, Professor John H. Warkentin, has intervened on behalf of the Senate of the respondent university requesting that that body be considered a separate and interested party to the proceedings. Because of the complexity of the circumstances giving rise to these applications it may serve some useful purpose in resolving the issues to retrace the events precipitating the present state of affairs.

2. After an organizational campaign of approximately three month’s duration the applicant association filed on December 5, 1975 an application for certification on behalf of a bargaining unit of full time academic staff and professional librarians engaged at the respondent university. In the ordinary course the Registrar informed interested parties of the application and set a terminal date and a hearing date of December 16th and 22nd respectively. The Registrar also advised the parties that the applicant association, because this was its initial appearance before the Board, would be required to satisfy the Board that its association was a trade union for purposes of section 1(1)(n) of the Act. Notification of the application was extended to employees by postings throughout the respondent’s campus of *Notices of Application for Certification* (Form 5). Several employee interventions were filed both collectively through their solicitor and individually in their personal capacities expressing opposition to the applicant’s attempts to acquire bargaining rights. Professor Jordan filed an individual statement of desire expressing opposition to the applicant’s efforts and advised that he intended to make representations at the hearing scheduled by the Registrar for that purpose. It was not until the hearing of December 22nd that the general nature of these representations were disclosed.

3. At the initial hearing the applicant in accordance with the Registrar's notice adduced evidence of its formation and subsequent evolution as an organization representative of the interest of employees affected by the application. Each person who filed an appearance sheet was given an opportunity to participate in this particular phase of the proceeding. Save for Professors Peterson and Jordan, each party was represented by counsel. At all material times the respondent employer assumed a neutral posture with respect to the applicant's assertion that its association ought to be treated as a trade union. Counsel for the group of objecting employees argued that the applicant should not be deemed as a trade union. Counsel for the group of objecting employees argued that the applicant should not be deemed a trade union because of its past affiliation with Deans and other administrative personnel of a managerial caste. This particular submission was thoroughly argued and in due course the Board, having considered the arguments, determined by its decision dated January 26, 1976 that the applicant was "an organization of employees" for purposes of section 1(1)(n) of the Act.

4. Professor Jordan during the course of the inquiry deposited an elaborate statement indicating the scope and nature of the representations he intended to make pursuant to his letter of opposition to the application. These representations pertained specifically to allegations of intimidation, coercion and misrepresentation purportedly committed by executive members of the applicant association in its attempts to persuade professorial staff at the respondent's School of Administrative Studies to support the applicant's efforts to acquire bargaining rights. Counsel for the applicant objected to consideration by the Board of the charges having regard to the stage in the proceedings in which they were made. The Board entertained the parties' submission in this regard and reserved its decision. At that time Professor Jordan indicated that he was pressed for time in that he had to catch a plane. After the parties had completed their argument on the timeliness issue the Board advised Professor Jordan that a decision on whether his allegations would be entertained would ensue in due course. Thereupon Professor Jordan departed.

5. Upon resumption of the proceedings and after argument on the status question was completed an agreement signed by representatives of the applicant association and representatives of the respondent university with respect to the appropriate bargaining unit was filed. Counsel had heretofore advised that certain faculty members at the respondent's Osgoode Hall Law School objected to their inclusion in the appropriate bargaining unit because they were employed in a professional capacity and ought not be deemed employees under section 1(3)(a) of the Act. Alternatively it was asserted that the professorial staff at the Law School did not share a community of interest with the academic staff engaged by other faculties of the university and therefore they should be excluded from the appropriate unit having regard to the criteria established by the Board in making such determinations under section 6(1) of the Act. Counsel for The Osgoode Hall Faculty Association informed the Board that his client expressed no objection to the issuance by the Board of an interim certificate under section 6(1)(a) of the Act provided it was without prejudice to its submissions with respect to the status of the members of the Law Faculty. No party to the proceeding opposed this procedure in connection with the ultimate disposition of the application.

6. Copies of the agreed statement were given to counsel for the group of objecting employees and Professor Peterson. They were invited to make representations with respect to its contents. As a result of their representations the parties agreed that three additional exclusions from the bargaining unit ought to be made. The parties also agreed that profes-

sors on sabbatical leave although appropriate for inclusion in the bargaining unit ought not be considered for purposes of the membership count having regard to the provisions of section 7(1) of the Act. Because of the complexity of the respondent's lists filed in reply to the application, it was resolved that a Labour Relations Officer ought to be appointed to check the employer's records before settling the lists. Accordingly a Labour Relations Officer after having checked the employer's records and after having reported the results of his investigation to the parties, submitted a statement of his findings to the Board. In this regard the parties waived the necessity for a formal report. At the termination of the hearing on December 22nd each party was asked whether it had any further representation to make with respect to either the description or composition of the appropriate bargaining unit. The parties agreed that there was nothing further to add with respect to the bargaining unit.

7. The number of employees included in the bargaining unit referred to in paragraph 6 herein (inclusive of the 41 professors at the Osgoode Hall Law School) totalled 890. Of these employees 605 signed documents evidencing membership support of the applicant's efforts to obtain bargaining rights. The applicant's membership position without the inclusion of the law faculty was significantly stronger. There was also filed a statement of desire inclusive of Professor Jordan's letter of opposition indicating that approximately 194 persons objected to representation by the applicant association for collective bargaining purposes. Professor Peterson in his capacity as Associate Dean of Student Affairs was excluded from the bargaining unit because of his exercise of managerial functions for purposes of section 1(3)(b) of the Act. The effect of the petition on the applicant's membership position was minimal. In other words the statement of desire filed herein, even if representative of the voluntary wishes of the signatories thereto, would not have induced the Board in accordance with its policy discretion under section 7(2) of the Act to direct a representation vote. Nevertheless notwithstanding the failure of the petition to cast doubt on the applicant's membership position, the preamble of the statement of desire might be of some relevance in disposing of the issues raised herein and therefore ought to be set out:

File No. 1394-75-R

"TO: THE ONTARIO LABOUR RELATIONS BOARD
IN THE MATTER OF AN APPLICATION BETWEEN:
YORK UNIVERSITY FACULTY ASSOCIATION.

Applicant

– and –
YORK UNIVERSITY

Respondent

STATEMENT OF DESIRE

We, the undersigned employees of York University, hereby respectfully advise this Board that we do not wish to be represented by the applicant herein as our bargaining agent with our employer, the respondent herein.

We also hereby authorize and appoint James Goodale, C. Hammond Dugan, Douglas Butler, James S. Tait, Paul Herzberg and John Yolton, our fellow employees to be our representative before this board and to speak on our behalf on all matters relating to this application.

The mailing address for our representatives is c/o Dr. D. Butler, Faculty of Chemistry, York University, 4700 Keele Street, Downsview, Ontario, and the name of our solicitor is Benjamin Lamb, Q.C. Messrs. Dillon, Cronin & Lamb, Suite 1002, 111 Richmond Street West, Toronto, Ontario.

DATED this 10th day of December, 1975."

8. By decision of the Board dated January 26th, the applicant association was determined to be a trade union and Professor Jordan was extended the opportunity "to adduce evidence and make submissions in support of the allegations contained in his written statement." The Registrar was directed "to list this matter for hearing *for the aforesaid purpose*", and scheduled a hearing accordingly for February 11th, 1976. By letter dated February 4th, 1976 Professor D. McCormack Smyth advised the Board that he wished to be made a party to the proceedings in order that he be permitted to submit evidence to the Board "as it seeks to determine who constitute management and who are employees in York University". In explaining why he was intervening at this late date in the proceedings Professor Smyth writes in part: ...

"Please let me explain at the outset why I did not request earlier that I be made a participating party. Since 1 September 1975 I have been on sabbatical leave from York and have spent considerable time traveling back and forth and in the United States on the research project for which I was granted leave. I have not received from your Board, or York University or the York University Faculty Association any communication nor have I seen any notice concerning your hearing of the latter's application. It was not until the first of this week that I saw the text of the form of agreement between York University Faculty Association and York University signed by W. D. Farr on behalf of York University concerning the composition of the proposed "Faculty Bargaining Unit." The first of this week also I phoned your office and asked for a copy of your regulations to determine on what bases I could ask to be made a participating party to the proceedings. I spoke to Mr. Saxe, who told me that copies of the regulations were not available as they had not yet arrived from the printer. Later Mr. Brunskill kindly phoned and told me to write this letter.

Subsequently I learned of the regulation of your Board which permits you to decide at any time that a person may be declared to be a participating party to your proceedings. I earnestly believe that on the basis of my intimate knowledge of, and day-by-day experience in, Canadian universities during more than twenty years and in particular in York University for nearly fourteen years I can help the Board in its consideration of the application submitted by the York University Faculty Association."

And later on he concludes:

"Please forgive me for the length of this letter but in view of the lateness of my request for a hearing I felt a rather comprehensive explana-

tion should be provided. Since I did not receive notice from your Board, or from York University, or from the York University Faculty Association, and since I have not seen any notice concerning your hearing of the York Faculty Association application and due to the non-availability of printed copies of your regulations, I believe it is only fair in terms of natural justice to ask that you make me a participating party to your proceedings on the York University Faculty Association application and afford me a hearing on 11 February 1976.

Thank you for your consideration of this letter and the requests which it contains.

Respectfully

D. McCormack Smyth
Professor"

9. Professor Smyth by his letter raised for the first time any mention of a limitation, by virtue of *The York University Act*, 1959, as amended, to according full time academic staff at the respondent's university representative bargaining rights pursuant to the provisions of *The Labour Relations Act*. Professor Smyth's letter was followed by a letter dated February 9th from counsel heretofore retained by Professor Jordan. Counsel requested that the Board reconsider its decision according the applicant trade union status in the light of subsequently discovered information and in support thereof alluded to substantially the same argument submitted by Professor Smyth. Without extensive elaboration of the argument, it is generally alleged that by operation of *The York University Act*, as amended, full time academic staff through its representatives must form a majority of the Senate and the committees thereof. Because the Senate in discharging its responsibilities of meeting the academic objectives of the university is required to deal with matters prescribed by statute of an alleged managerial nature, full time teaching staff inherently are entrusted with managerial functions that by operation of law must be exercised. It therefore follows, having regard to the exercise of these decision making functions, that a managerial taint pervades the applicant's efforts to secure bargaining rights on behalf of its academic members. More particularly having regard to the distinction made in *The York University Act* between employees and teaching staff the applicant as an association of academic persons is thereby precluded from being treated as an organization of employees. Rather, it is an organization that consists of managerial persons that by operation of law cannot be treated as a trade union. Alternatively, counsel requested leave of the Board to raise the argument with a view to making the appropriate managerial exclusions from the bargaining unit determined by the parties' agreement to be appropriate.

10. Upon resumption of the proceedings on February 11, 1976 counsel both for Professors Smyth and Jordan submitted argument on why the Board ought to review its finding of trade union status. More particularly, it was suggested that because Professor Smyth was on sabbatical leave in the United States he would not have had an opportunity to participate in the full certification process. In the case of Professor Jordan counsel argued that the Board ought not to adhere strictly to its past practice with respect to entertaining applications for reconsideration having regard to the very informality of our proceedings and the fundamental importance of "the argument" if proven to be sound. At that time counsel for Professor Jordan disclosed to the Board that he was also representing a number of the

group of objectors who had abandoned counsel and preferred to be represented by him. In reply, counsel for the applicant argued that it would be grossly unfair for the Board to permit leave to reopen the status question. Ample opportunity had been extended interested persons through the Board's notices in advance of the hearing. The Board's practice with respect to entertaining leave for reconsideration of its decisions ought to be applied in the circumstances of this case for to do otherwise would be prejudicial to interest of the vast majority of employees affected by the application. Indeed, in a moment of excited exasperation, counsel confronted Professor Smyth and defied him to deny that he was in attendance at the Board's initial hearing on December 22, 1975. Professor Smyth admitted that he was in attendance on that day. Furthermore, upon reviewing the record the statement of desire dated December 10th filed in opposition to the instant application and referred to in paragraph 7 herein shows Professor Smyth to be a signatory thereto.

11. Counsel for the applicant insisted that the Board proceed with the matter for which the hearing was initially scheduled, i.e. Professor Jordan's charges. The Board thereupon directed counsel for Professor Jordan to adduce its evidence in support of the allegations. Counsel complied once having been denied a motion for leave to amend the particulars by requesting the addition of another allegation. During the balance of that day the Board heard the testimony of witnesses called to adduce evidence in connection with the allegations. After the issues had been argued the Board retired to consider the matters raised by the parties. By oral decision the Board unanimously determined that the allegations were entirely without merit and "categorically" denied them. Thereupon we asked the parties if any further representation was forthcoming with respect to the requests for leave to review filed by Professors Smyth and Jordan. At that time, counsel for Professor Jordan advised he intended to submit written elaboration of his submissions given at commencement of the proceedings.

12. By letter dated February 20th, counsel reviewed in writing the argument referred to in paragraph 9 herein and repeated his request for reconsideration of the Board's decision of January 26th. Professor Smyth by letter dated February 28, 1976 agreed with the submissions filed by counsel requesting another hearing and further developed "the argument" to fit his particular perspective of the issue. As a result of this correspondence some professors upon appreciating the implications that a Board certificate might have on the operation of the Senate have since sought to intervene for the purposes of forwarding "the argument". Throughout these proceedings the respondent university has assumed a neutral position on the issue raised by these requests for reconsideration.

13. The issue in the circumstances described herein is whether the Board ought to permit counsel for Professors Smyth and Jordan to adduce evidence in support of their grounds for review of the Board's determination that the applicant is a trade union for purposes of section 1(1)(n) of the Act. At the outset the Board is quite satisfied that by operation of section 95(1) of the Act we may "at any time" reconsider any decision, order, direction, declaration or ruling made during the course of a proceeding and as a result thereof may "vary or revoke any such decision, order, direction or ruling". In the exercise of this authority the Board's jurisdiction is tempered by the discretion to reconsider only "if it considers it advisable to do so". In attempting to formulate a practice consistent with that discretion the Board has striven to achieve some measure of finality to a proceeding provided that all interested persons have been given an opportunity to participate in the deliberations. In applications for certification, particularly, the Board attempts to achieve finality

with expedition but only upon being satisfied that the rights of interested persons to a fair hearing of all relevant issues have been accorded. On the one hand the Board is conscious that delays encountered in protracted proceedings operates to the prejudice of employees seeking rights to collective bargaining. And, of course, the Board's posture in administering the Act is coloured by the Legislature's intent, as expressed in the preamble, of fostering the advancement of collective bargaining through a trade union as the freely designated representative of employees. In our experience the results of delays occasioned by untimely objections and inordinately lengthy proceedings has in many instances contributed to the defeat of employees' legitimate expectations and thereby has undermined the very design of the Act. (See; *Hotel and Restaurant Employees v. Nick Masney Hotels Ltd. et al* 70 CLLC ¶14,020 at p. 101 (per Laskin J.A. as he then was). On the other hand, the Board is not impervious to the consequences of conferring representative rights on the status of the individual employee's capacity to deal with his employer with respect to his immediate terms and conditions of employment and the future development of his career. The extension to the majority of bargaining rights reflected in a Board certificate to a significant degree abrogates the contractual relationship between the employer and his employee. (See; *Le Syndicat Catholique des Employées de Magasins de Quebec, Inc. v. La Compagnie Paquet Ltee* 59 CLLC ¶15,409 at p. 935 (per Judson J.)). It is in this context that we deem it our responsibility to reach some equilibrium in advancing the cause of collective bargaining as contemplated under the scheme of the Labour Relations Act provided that the procedural rights of the individual are adhered to.

14. In translating the objective heretofore described into pragmatic policy considerations in the exercise of our discretion to reconsider past determinations the Board has looked to the practice and procedure of the courts for guidance. In so doing the Board indicated in *The Detroit River Construction Ltd. case* 63 CLLC ¶16,260 at p.1117:

"The question for determination is whether the Board should reopen this case for the purpose of entertaining *viva voce* evidence of the matters contained in the affidavits. While depending upon the circumstances of the case and the applicable principles of natural justice, the Board ought not to be as strict or as technical as a court, it must nevertheless, in our view, recognize the necessity for and apply some principle of finality to its decisions. It stands to reason that when a party has gone through the ordeal, expense and inconvenience of a hearing and obtained a decision in his favour, that he should not be deprived of the benefit of that decision except for good excuse. The Board ought not to encourage a practice whereby one party can remain silent throughout a hearing, and after he has discovered the weak points in his adversary's armour be permitted to exploit them by calling evidence at another and later hearing which he could and should have presented at the original hearing. If it were otherwise, the door would be open in any given case to ceaseless and never-ending hearings each serving as a prelude to the next *ad infinitum* and no one could ever safely rely on any decision as finally settling the rights of the parties."

Bearing these considerations in mind and having regard to the relevant court authorities the Board adopted the following as its practice (at page 1118):

"In this respect, and on the analogy of the rules applied by the Courts the Board should, at least and as a general rule require, as minimum conditions, that a party seeking to set aside a decision on this ground show, (1) that the alleged new evidence proposed to be adduced could not have been obtained by reasonable diligence and presented at the hearing held for that purpose, (2) that there is a strong probability that the new evidence will have a material and determining effect on the decision sought to be set aside."

15. A reasonable interpretation of Professor Smyth's letter dated February 4th indeed left us with the impression that since September 1st, 1975 he was on sabbatical leave in the United States for the purposes of pursuing his research studies and thereby would have been deprived of notice of the initial hearing scheduled for December 22, 1975. If such circumstances were the case we recognize that the Board ought to lend a sympathetic ear to any intervention with a view to making representation with respect to the disposition of the application. In fact, at first glance it appeared to the Board that Professor Smyth shortly after he saw the agreement "concerning the composition of the proposed Faculty Bargaining Unit" sought with some sponteneity to extend the favour of his experience in resolving problems relating to the appropriate bargaining unit. This impression was soon dissipated. At the hearing scheduled for February 11th, Professor Smyth (who was represented by counsel) admitted, upon being confronted by the applicant's counsel, that he in fact was present and in attendance at the Board's initial hearing. A further review of the record shows that on December 10th Professor Smyth penned his signature authorizing a number of his colleagues at the respondent university to represent his interests in opposing the applicant's efforts to secure bargaining rights. And indeed the group of objectors are shown to be represented by counsel. Counsel attended the hearing and participated on his clients' behalf in advancing their concerns on all matters relevant to the disposition of the application. The Board is clearly entitled to assume that counsel at all material times advanced the cause of the group of objectors in a manner consistent with their direction and instruction.

16. Professor Smyth explained that his reticence that day was to some extent attributable to his expectation that the respondent employer would assume a more aggressive posture on the issues discussed at the hearing. Indeed, it may safely be assumed that Professor Smyth was disappointed that "the argument" and the evidence in support thereof was not advanced by the respondent university. Even assuming but without finding that that explanation justified his silence, it does not explain the delay of approximately six weeks thereafter of the filing of the Professor's request to intervene in the proceedings. The Board can only conclude that upon learning of our decision dated January 26th, Professor Smyth thereupon sought to undermine the inevitability of a Board certificate according the vast majority of the respondent's employees collective bargaining rights. We have not been satisfied that a case has been made to justify according Professor Smyth special consideration. Accordingly his request to be added as a party is redundant in that he has been heretofore represented throughout these proceedings in a like manner to the other employees who have signified their objection to the application. Furthermore, the Board denies Professor Smyth's request to intervene for the purposes set out in his letter dated February 4th, 1976.

17. Professor Jordan attended the Board's initial hearing in a personal capacity. He advised the Board by letter dated December 12, 1975 that he intended to make representations in opposition to the application. Professor Jordan assumed what may aptly be de-

scribed as a posture of passive disinterest in connection with the subject of the applicant's trade union status. As the day appeared to be consumed with that issue Professor Jordan interrupted the proceedings and requested that we entertain his representations (at some future date) in that he had to catch a plane. Particulars of the allegations of wrongdoing were submitted to us and notwithstanding the strenuous argument put forward by the applicant's counsel the Board determined that the Professor ought to have "his day in court". Professor Jordan left the proceedings before the parties had made their representations with respect to the appropriate bargaining unit.

18. Counsel by reason of his letter dated February 9th (and elaborated further by his letter dated February 20th) advised the Board that he intended, in addition to adducing evidence in support of the allegations, to seek reconsideration of the Board's finding of trade union status. At the outset of the proceedings dated February 11th we were also advised that counsel was representing a number of the group of objectors who had previously been represented by other counsel. It seemed apparent at that time that these employees had decided to attach their fate to the success or otherwise of Professor Jordan's strategy in frustrating the applicant's campaign. It also seemed apparent that the foremost concern of counsel for Professor Jordan in effecting that strategy was to persuade us to grant him leave to adduce evidence in reconsideration of our finding of status and the appropriateness of the agreed to bargaining unit.

19. Counsel also advised that in addition to the argument initially raised by Professor Smyth he wished to adduce evidence with respect to the Board's findings in connection with the participation of Deans in the affairs of the applicant association and the continuance of dues deduction by the respondent employer from their pay cheques. In this regard, counsel for the group of objecting employees was given ample opportunity at the initial hearing to adduce evidence in this regard and, indeed, an agreed statement was submitted to us with respect to the past affiliation of Deans with the applicant organization. The Board is simply not prepared to permit Professor Jordan (or his colleagues) leave to review the decision of January 26th for the purpose of "introducing contradictory evidence in order to set oath against oath". This is obviously the very mischief that the Board's practice is designed to prevent. (See; *The Detroit River Construction Ltd. case* (supra) at p.1118). Professor Jordan had ample opportunity to participate in the phase of the proceedings pertaining to the status issue. At that time he assumed an almost disinterested posture. Indeed, that posture may somewhat be explained by the appearance of Professor Jordan's name as a signatory to the petition dated December 10th, 1975. In other words, on December 22, 1975, save for his position with respect to his allegations of wrongdoing, Professor Jordan acted in a manner consistent with the group of objectors who had signified by the petition their opposition to the application. We are not prepared to permit Professor Jordan to exploit for some other purpose our decision according him a hearing with respect to those allegations. For reasons similar to those applied in the case of Professor Smyth, we are not satisfied that Professor Jordan has made out a case for special consideration with respect to according him leave to review our initial finding. Accordingly, the Board finds that his application for reconsideration ought to be denied.

20. Alternatively, counsel for Professor Jordan requests that we permit evidence to be adduced with respect to "the argument" for purposes of making appropriate managerial exclusions from the bargaining unit. We have already recorded that the parties who remained in attendance at the Board's initial hearing were extended ample opportunity to make repre-

sentations with respect to the appropriate bargaining unit. Indeed the appropriate bargaining unit, save for the members of the law faculty, was determined by agreement of the parties. Professor Jordan had left the hearing room before the Board had reached that stage of the proceedings when the agreement was finalized. In so doing we are of the view that Professor Jordan left at his peril. In other words, we do not propose at this late date to roll back the proceedings in order to permit evidence to be adduced designed to undermine the agreement of the parties. (See: *The Fonthill Lumber Ltd. case* 64 CLLC ¶16,305 at pp1259-1260). In the final analysis the Board is satisfied that the record shows us to have extended Professor Jordan every opportunity to participate in all phases of these proceedings.

21. The Board was somewhat disturbed by the stream of correspondence from various members of the university community following the filings of counsel for Professors Jordan and Smyth in their attempts to reopen the proceedings. In our view the effect of these interventions demonstrates the requirement of a firm and even handed application of our policy of restricting to narrow grounds leave for reconsideration. To do otherwise is to invite the inevitability of ceaseless and unending proceedings. The evidence is clear that approximately three months were consumed in the applicant's organizational campaign. Approximately one thousand persons were involved peripherally in the applicant's attempts to seek membership support. The campaign apparently was given widespread publicity through the campus newspaper, "The Excalibur". Indeed the Board was informed of innumerable organizational meetings convened by representatives in support of the campaign at the various faculties and schools comprising the university. The application was filed on December 5, 1975. Board notification through its postings followed in due course advising of the terminal and hearing date. Approximately two hundred signatures were penned to a document expressing opposition to the application. At no time before or during the course of the Board's first hearing did any one member of that community come forward and advise the Board that we ought to entertain submissions pertaining to impediments to the securing of bargaining rights by application of *The York University Act*. Indeed, the Board throughout this proceeding has not had placed before it any explanation as to why that argument could not have been presented by the exercise of reasonable diligence at the hearing scheduled for December 22, 1975. We are clearly of the opinion that these interventions are late and ought not to be entertained. In so finding, the Board must pay some regard to the approximately 605 employees who supported the applicant's campaign and who have patiently and in silence awaited their rights to collective bargaining.

22. The Board repeats its decision dated January 26, 1976 that the applicant is a trade union under section 1(1)(n) of the Act.

23. Having regard to the agreement of the parties, the Board further finds that all full-time faculty and full-time professional librarians employed by York University in the Municipality of Metropolitan Toronto save and except the (a) President (b) Deans (except the Dean of Students of Glendon College) (c) Associate Deans (d) Directors of Research Centres and Institutes (e) Faculty members on the Board of Governors (f) Director of Libraries (g) Associate Director of Libraries (h) Assistant Director of Libraries (Technical Services) (i) Director of the Office of International Services (j) Faculty teaching at York University while on leave from other universities or educational institutions (k) Director of the Division Research and Executive Development (l) Director of the Department of Instructional Aid Resources, constitute a unit of employees of the respondent appropriate for collective bargaining.

24. For purposes of clarity, the Board notes the further agreement of the parties with respect to the following:

1. The number of Associate Deans excluded from the unit shall not exceed two per Faculty, unless otherwise negotiated and agreed between YUFA and the University.
2. The University is at liberty to exclude from the unit, upon their appointment, an academic Vice-President, and up to two academic Assistants to the President at any one time.
3. The research centres and institutes referred to in (d), above, are, as at December 5, 1975:
 - Institute for Behavioural Research
 - Survey Research Centre
 - York Transport Centre
 - Centre for Research in Experimental Space Science
 - Centre for Research in Environmental Quality
4. The unit does not include Post-Doctoral Fellows, Research Associates, or members of the Centre for Continuing Education (unless they are full-time members of faculty).
5. Without restricting the scope of the definition of full-time faculty, both parties agree in addition that the bargaining unit includes full-time faculty appointed at the rank of instructor, full-time faculty in separate faculty streams, full-time faculty in the Department of Physical Education, full-time faculty in the Writing Workshop, terminal full-time faculty serving on site, contractually limited faculty other than in section (j), above, Masters and Senior Tutors of Colleges, chairmen of Faculty departments and divisions, and the Director of the Office of Research Administration.
6. The number of faculty in section (j), above, is eight, as at December 5, 1975 (see schedule A, attached for the eight names) and shall not exceed twelve without negotiation and agreement between YUFA and the University.
7. The question of the inclusion or exclusion from the bargaining unit of the following positions shall be negotiated by YUFA and the University within ninety days following receipt by the President of the Report of the Presidential Committee on Professional Librarians, and if YUFA and the University fail to reach agreement on the matter, it shall be referred to the Ontario Labour Relations Board:
 - Assistant Directors of Libraries
 - (including Assistant Director for Technical Services)
 - Head of Cataloguing

8. All full-time faculty serving in administrative positions excluded from the bargaining unit will rejoin the bargaining unit upon completion of their terms.

25. The Board is satisfied on the basis of all the evidence before it that more than fifty-five per cent of the employees of the respondent in the bargaining unit at the time the application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

26. As a result of the representations and agreement of the parties with respect to the disposition of the issue of the employment status of members of the law faculty at the respondent's Osgoode Hall Law School the Board is of the view, that an interim certificate ought to issue pursuant to section 6(1)(a) of the Act.

27. Mr. J. A. MacDonald, Labour Relations Officer, is authorized to inquire into and report back to the Board on the employment status of faculty members at Osgoode Hall Law School and their community of interest with employees described in the appropriate bargaining unit referred to above.

CASE LISTINGS APRIL 1976

	Page
1. Applications for Certification	
(a) Bargaining Agents Certified	47
(b) Applications Dismissed	59
(c) Applications Withdrawn	62
2. Applications for Declaration Terminating Bargaining Rights	63
3. Applications for Declaration that Strike Unlawful	64
4. Applications for Consent to Prosecute	64
5. Complaints under Section 79 (Unfair Labour Practice)	65
6. Application for Section 39	67
7. Applications for Consent to Early Termination of Collective Agreement	67
8. Application for Section 55	68
9. Jurisdictional Dispute	68
10. Application for Determination under Section 95(2)	68
11. References to Board Pursuant to Section 96	68
12. Applications under Section 112a	68
13. Applications for Reconsideration of Board's Decision	69

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING APRIL 1976

Applications for Certification

BARGAINING AGENTS CERTIFIED

No Vote Conducted

0702-75-R: Retail Clerks International Association (Applicant) v. Haviland Drug Limited (Respondent).

Unit: "all pharmacists, pharmacists interns and student pharmacists employed by the respondent in Metropolitan Toronto, save and except persons regularly employed for not more than twenty-four hours per week." (8 employees in the unit). (*Having regard to the representations of the parties*).

1150-75-R: Ontario Nurses' Association (Applicant) v. Glengarry Memorial Hospital (Respondent).

Unit #1: "all registered and graduate nurses employed in a nursing capacity at Glengarry Memorial Hospital, Alexandria, save and except supervisors and persons above the rank of supervisor." (13 employees in the unit).

(Bargaining unit #2 – See Application Certified Subsequent to Post-Hearing Vote).

1394-75-R: York University Faculty Association (Applicant) v. York University (Respondent) v. Osgoode Hall Faculty Association (Intervener) v. Group of Employees (Objectors) v. Professor Rein Peterson (Employee) v. Professor William A. Jordan (Employee) v. Professor D. McCormack Smyth (Employee).

Unit: "all full-time faculty and full-time professional librarians employed by York University in the Municipality of Metropolitan Toronto save and except the (a) President (b) Deans (except the Dean of Students of Glendon College) (c) Associate Deans (d) Directors of Research Centres and Institutes (e) Faculty members on the Board of Governors (f) Director of Libraries (g) Associate Director of Libraries (h) Assistant Director of Libraries (Technical Services) (i) Director of the Office of International Services (j) Faculty teaching at York University while on leave from other universities or educational institutions (k) Director of the Division Research and Executive Development (l) Director of the Department of Instructional Aid Resources." (1077 employees in the unit). (*Having regard to the agreement of the parties*). (*clarity note – see Report of full decision [1976] OLRB Rep. April.*).

1540-75-R: International Union United Plant Guard Workers of America Local 1962 (Applicant) v. Rank City Wall Canada Limited (Respondent).

Unit: "all security guards employed by the respondent at Rank Sheppard Centre – 2 – 4 & 6 Forest Laneway, Willowdale, Ontario, bordered by Sheppard Avenue East, Yonge Street, Doris Avenue and Greenfield Avenue in the Borough of North York, Metropolitan Toronto, save and except security chiefs and those above that rank and persons regularly employed for not more than twenty-four hours per week." (23 employees in the unit). (*Having regard to the agreement of the parties*).

1633-75-R: International Association of Machinists and Aerospace Workers (Applicant) v. Highland Ford Sales Limited (Respondent).

Unit: "all office and clerical employees of the respondent in Sault Ste. Marie, save and except supervisors and persons above the rank of supervisor." (9 employees in the unit).

1671-75-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. Trench Electric Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in Markham, Ontario, save and except foremen and those above the rank of foreman, engineering, office and sales staff." (28 employees in the unit). (*Having regard to the agreement of the parties*).

1731-75-R: Kingston Typographical Union, No. 204 (Applicant) v. The Intelligencer, Published by Canadian Newspapers Company Limited (Respondent).

Unit: "all employees of the respondent at 45 Bridge Street East in the City of Belleville, Ontario, employed in the composing room save and except foreman and persons of equal and higher rank and persons regularly employed for not more than twenty-four hours per week." (24 employees in the unit). (*Having regard to the agreement of the parties*).

1744-75-R: International Molders & Allied Workers Union (Applicant) v. Union Electric Supply Co. Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Mississauga, save and except foremen, persons above the rank of foreman and office and sales staff." (4 employees in the unit).

1765-75-R: Ontario Nurses' Association (Applicant) v. Groves Memorial Community Hospital (Respondent) v. Group of Employees (Objectors).

Unit #1: "all registered and graduate nurses employed by the respondent at Fergus, Ontario, in a nursing capacity save and except assistant head nurses and persons above the rank of assistant head nurse, persons regularly employed for 24 hours per week or less and students employed during the school vacation period." (28 employees in the unit).

Unit #2: "all registered and graduate nurses regularly employed by the respondent at Fergus, Ontario, in a nursing capacity for not more than 24 hours per week and student nurses employed in a nursing capacity during the school vacation period save and except assistant head nurses and persons above the rank of assistant head nurse." (3 employees in the unit).

1827-75-R: Kingston Typographical Union, N. 204 (Applicant) v. The Intelligencer, Published by Canadian Newspapers Company Limited (Respondent).

Unit #1: "all employees of the Respondent at 45 Bridge Street East in the City of Belleville, Ontario, regularly employed as tape perforator operators in the composing room for not more than twenty-four (24) hours per week." (4 employees in the unit). (*Having regard to the agreement of the parties*).

Unit #2: "all employees of the Respondent at 45 Bridge Street East in the City of Belleville, Ontario, regularly employed in the Editorial Department as proofreaders and librarians for not more than twenty-four (24) hours per week." (5 employees in the unit). (*Having regard to the agreement of the parties*).

1828-75-R: Teamsters Local 141 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. N-J Spivak Limited (Respondent) v. Group of Employees (Objectors.).

Unit: "all employees of the respondent engaged in the Ready Mix Concrete Operation at and out of the respondent's premises at R. R. #1, London, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff, and students employed during the school vacation period." (16 employees in the unit). (*Having regard to the agreement of the parties*). (*clarity note* see Report of full decision [1976] OLRB Rep. April.).

1842-75-R: International Molders & Allied Workers Union (Applicant) v. Union Electric Supply Co. Limited (Respondent).

Unit: "all employees of the respondent at St. Catharines, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff." (5 employees in the unit). (*Having regard to the agreement of the parties*).

1847-75-R: Addressograph-Multigraph Field Employees' Association (Applicant) v. Addressograph Multigraph of Canada Limited (Respondent) v. Robert G. Gauthier (Intervener).

Unit: "all employees of the respondent in the City of Ottawa, Ontario save and except supervisors and persons above the rank of supervisor, payroll and employee benefits administrator, secretary to the branch manager, and students employed for the school vacation period." (43 employees in the unit).

1850-75-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1190 (Applicant) v. Silver Carpentry Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (12 employees in the unit).

1854-75-R: International Brotherhood of Electrical Workers, Local Union 773 (Applicant) v. Acme Neon Signs (Windsor) Ltd. (Respondent).

Unit: "all employees of the respondent at Windsor, Ontario, save and except supervisors, persons above the rank of supervisor, office and sales staff and students employed during the school vacation period." (9 employees in the unit). (*Having regard to the agreement of the parties*).

1859-75-R: Oil, Chemical & Atomic Workers International Union (Applicant) v. Beker Industries of Canada Limited (Respondent).

Unit: "all employees of the respondent at Courtright, Ontario, save and except lab supervisor, chief engineer, shift supervisors and persons above the rank of shift supervisor, office and sales staff." (36 employees in the unit).

1872-75-R: Labourers' International Union of North America Local 506 (Applicant) v. Jafrob Limited and Cath Ann Limited, carrying on business as Commercial Enterprises (Respondent).

Unit: "all construction labourers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of

Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario employed on building projects, except residential building projects, but including labourers employed as helpers of bricklayers and plasterers, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

1884-75-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Funcraft Vehicles Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Cambridge, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff." (43 employees in the unit).

1885-75-R: Labourers International Union of North America, Local 183 (Applicant) v. A. E. LePage (Ontario) Limited (Respondent).

Unit: "all employees of the respondent engaged in cleaning and maintenance at the Westerham 63 Callowhill Dr., and at 416 The Westway, Etobicoke, Ontario, including resident superintendent save and except property managers, persons above the rank of property manager, office and clerical staff." (2 employees in the unit). (*On agreement of the parties*).

1888-75-R: United Steelworkers of America (Applicant) v. Rapistan System Limited (Respondent).

Unit: "all employees of the respondent at Metropolitan Toronto save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than twenty-four (24) hours per week and students employed during the school vacation period." (46 employees in the unit).

1892-75-R: United Rubber, Cork, Linoleum and Plastic Workers of America, AFL CIO CLC (Applicant) v. Emery Industries Limited (Respondent).

Unit: "all laboratory technicians of the respondent in Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor, office staff, sales staff, research and development staff, engineering staff, students employed during school vacation period and persons covered by an existing collective agreement." (5 employees in the unit). (*Having regard to the agreement of the parties*).

1897-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. Blue Star Investments (Respondent).

Unit: "all construction labourers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario employed on residential construction, save and except construction labourers employed as helpers of bricklayers and plasterers, non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

1902-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. High City Holdings Limited, carrying on business as Catalyst Gates and City Terrace South (Respondent).

Unit: "all employees of the respondent engaged in cleaning and maintenance at 399 Markham Road, Scarborough, Ontario (Catalyst Gates) and 419 Markham Road, Scarborough, Ontario (City Terrace South) including resident superintendents, save and except property managers, persons above the rank of property manager, office and clerical staff." (5 employees in the unit). (*On agreement of the parties*).

1903-75-R: Canadian Union of Public Employees (Applicant) v. The Corporation of the Township of Kingston (Respondent).

Unit: “all office, clerical and technical employees of the respondent, in the Township of Kingston save and except superintendents, persons above the rank of superintendent, arena managers and department heads, township clerk, treasurer, deputy treasurer, secretary to the clerk, and employees covered by a subsisting collective agreement with the Canadian Union of Public Employees and its Local 1850.” (10 employees in the unit). (*Having regard to the agreement of the parties*).

1906-75-R: Ontario Nurses’ Association (Applicant) v. Trenton Memorial Hospital (Respondent).

Unit #1: “all registered and graduate nurses employed in a nursing capacity by the respondent at Trenton, Ontario, save and except supervisors, head nurses, persons above the rank of supervisor and head nurse and persons regularly employed for not more than 24 hours per week.” (82 employees in the unit).

Unit #2: “all registered and graduate nurses employed in a nursing capacity by the respondent at Trenton, Ontario, who are regularly employed for not more than 24 hours per week save and except supervisors, head nurses and persons above the rank of supervisor and head nurse.” (42 employees in the unit).

1908-75-R: United Cement, Lime and Gypsum Workers International Union, A.F.L. C.I.O. C.L.C. (Applicant) v. Custom Aggregates (Respondent).

Unit: “all employees of the respondent working at its gravel pit situated on lots 23 and 24 concession 7 Township of Puslinch in the County of Wellington, save and except foremen, persons above the rank of foreman, office staff and students employed during the school vacation period.” (9 employees in the unit). (*Having regard to the agreement of the parties*).

1911-75-R: Sheet Metal Workers’ International Association Local Union #47 (Applicant) v. J. D. Sanderson Co. Limited (Respondent).

Unit: “all employees of the respondent engaged in roofing in the Regional Municipality of Ottawa – Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman.” (18 employees in the unit). (*clarity note* – see Report of full decision [1976] OLRB Rep. April).

1912-75-R: Sheet Metal Workers’ International Association Local Union #47 (Applicant) v. Watertight Roofing and Sheet Metal Ltd. (Respondent).

Unit: “all employees of the respondent engaged in roofing in the Regional Municipality of Ottawa Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman.” (6 employees in the unit). (*clarity note* – see Report of full decision [1976] OLRB Rep. April).

1917-75-R: Labourers’ International Union of North America, Local 183 (Applicant) v. Tudor Glen Homes (Respondent).

Unit: “all construction labourers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario employed on residential construction, save and except construction labourers employed as helpers of bricklayers and plasterers, non-working foremen and persons above the rank of non-working foreman.” (10 employees in the unit).

1919-75-R: Service Employees International Union, Local 532, A.F. of L., C.I.O. CLC (Applicant) v. Beaconhill Lodges of Canada Ltd. (Respondent).

Unit: "all employees of the respondent at Hamilton regularly employed for not more than twenty-four (24) hours per week and students employed during the school vacation period save and except professional nursing staff, supervisors, foremen, persons above the rank of supervisor or foreman and office staff." (30 employees in the unit).

1920-75-R: Service Employees International Union, Local 532 A.F. of L., C.I.O., C.L.C. (Applicant) v. The West Haldimand General Hospital (Respondent).

Unit: "all employees of the respondent at Hagersville regularly employed for not more than twenty-four (24) hours per week save and except professional nursing staff supervisors, foremen, persons above the rank of supervisor or foreman and office staff." (18 employees in the unit).

1924-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. Sam-Sor Enterprises Inc. (Respondent).

Unit: "all employees of the Respondent engaged in cleaning and maintenance at Antica House Apartments, Downsview, including resident superintendents, save and except property managers, persons above the rank of property manager, office and clerical staff." (2 employees in the unit). (*Having regard to the agreement of the parties*).

1934-75-R: United Brotherhood of Carpenters and Joiners of America Local 1988 (Applicant) v. MacLachlan Lumber Company (Kingston) Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Townships of Elizabethtown, Augusta, and Edwardsburgh and all lands south thereof (there are three Municipalities south of these townships: Brockville, Prescott and Cardinal) in the United Counties of Leeds and Grenville, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

0001-76-R: Service Employees Union, Local 210, Affiliated with Service Employees International Union, AFL-CIO-CLC (Applicant) v. Country Village Inc. (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent employed at its Nursing Home and Lodge at Woodslee, Ontario, save and except professional medical staff, registered nurses, supervisors, persons above the rank of supervisor, office staff, dieticians, physiotherapists, occupational therapists, students employed during the school vacation period and persons regularly employed for not more than twenty-four (24) hours per week." (51 employees in the unit). (*Having regard to the agreement of the parties*).

0010-76-R: Labourers' International Union of North America, Local 183 (Applicant) v. Greenwin Property Management Ltd. (Respondent).

Unit: "all employees of the Respondent engaged in cleaning and maintenance at 57 Mabelle Ave., and 5005 Dundas Street West, Islington, including resident superintendents, save and except property managers, persons above the rank of property manager, office and clerical staff." (5 employees in the unit). (*Having regard to the agreement of the parties*).

0013-76-R: The Canadian Red Cross Blood Transfusion Service Employees (Applicant) v. The Canadian Red Cross Society (Blood Transfusion Service) (Respondent).

Unit: "all non-professional employees of the Respondent (CRCBTS) working at or out of the Toronto Blood Transfusion Centre, the Hamilton Blood Transfusion Centre, the Ottawa Blood Transfusion Centre and the London Blood Transfusion Centre, employed as Clinic Assistants, Clerical Staff, Transport Staff and Laboratory Helpers, save and except Transport Officers, the Office Manager (Toronto), Office Supervisor (Ottawa), Centre Secretary-Stores Accountant (Hamilton) and Office Supervisor (London), persons employed above these ranks, and those employed on a casual, part-time or temporary basis." (165 employees in the unit). (*Having regard to the agreement of the parties*).

0014-76-R: Labourers' International Union of North America, Local 183 (Applicant) v. Greenwin Property Management Ltd. (Respondent).

Unit: "all employees of the Respondent engaged in cleaning and maintenance at 521 and 523 Finch Ave. West, Willowdale, including resident superintendents, save and except property managers, persons above the rank of property manager, office and clerical staff." (2 employees in the unit). (*Having regard to the agreement of the parties*).

0018-76-R: Warehousemen and Miscellaneous Drivers Local Union No. 419 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. I.C.B. Warehousing Division of Alar-Anson Limited (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation period." (5 employees in the unit). (*Having regard to the agreement of the parties*).

0020-76-R: The Canadian Union of Public Employees (Applicant) v. Tri-Town Nursing Homes Limited (Respondent).

Unit: "all employees of the Kapuskasing Nursing Home Limited at Kapuskasing, Ontario regularly employed for not more than 24 hours per week and students employed during the school vacation period save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, technical personnel, supervisors, persons above the rank of supervisor and office and clerical staff and registered nursing assistants." (39 employees in the unit).

0021-76-R: The Canadian Union of Public Employees (Applicant) v. Tri-Town Nursing Homes Limited (Respondent).

Unit: "all employees of the Kapuskasing Nursing Home Limited at Kapuskasing, Ontario, save and except professional medical staff, graduate nursing staff, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, technical personnel, supervisors, persons above the rank of supervisor, office and clerical staff, persons regularly employed for not more than 24 hours per week, students employed during the school vacation period and registered nursing assistants." (18 employees in the unit).

0022-76-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Emrick Plastics Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the Respondent at Windsor, Ontario, save and except foremen, those above the rank of foreman, quality control staff, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed for the school vacation period." (32 employees in the unit). (*Having regard to the agreement of the parties*).

0025-76-R: Canadian Food and Allied Workers Local Union 633, Chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. Food Fair Super Mart Limited (Respondent).

Unit: "all meat department employees of the respondent at its retail store in Brantford, Ontario, save and except persons employed for not more than 24 hours per week and students employed in off-school hours and during the school vacation period." (2 employees in the unit).

0026-76-R: Canadian Food and Allied Workers Local Union 175, Chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. Food Fair Super Mart Limited (Respondent).

Unit: "all employees of the respondent at its retail store in Brantford, Ontario, save and except meat department employees, store manager, persons above the rank of store manager and persons regularly employed for not more than 24 hours per week and students employed in off-school hours and during the school vacation period." (5 employees in the unit).

0028-76-R: Labourers' International Union of North America, Local 183 (Applicant) v. Greenwin Property Management Ltd. (Respondent).

Unit: "all employees of the company engaged in cleaning and maintenance at 77 Huntley St., Toronto, including resident superintendents, save and except property managers, persons above the rank of property manager, office and clerical staff." (4 employees in the unit). (*Having regard to the agreement of the parties*).

0039-76-R: United Brotherhood of Carpenters and Joiners of America Local Union 1190 (Applicant) v. York Carpentry (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).

0040-76-R: Labourers' International Union of North America, Local 183 (Applicant) v. Gordy Construction Company (Respondent).

Unit: "all construction labourers in the employ of the respondent in Metropolitan Toronto, the Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except construction labourers employed on building projects, shop and yard employees, non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

0041-76-R: Local Union 800 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Applicant) v. Indian Bay Limited (Respondent).

Unit: "all plumbers and plumbers' apprentices in the employ of the respondent in the Townships of Kirkland Lake and the Geographic Townships (unorganized) immediately adjacent thereto in the District of Timiskaming, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

0042-76-R: United Steelworkers of America (Applicant) v. Drug Trading Company Limited (Respondent).

Unit: "all employees of the respondent company in Kitchener, Ontario, save and except Foremen, persons above the rank of Foreman, Office and Sales Staff, and Registered Pharmacists." (6 employees in the unit). (*Having regard to the agreement of the parties*).

0050-76-R: London Ambulance Attendants Association Local 2 for Chatham and District (Applicant) v. Chatham and District Ambulance Service Limited (Respondent).

Unit: "all employees of the respondent in Chatham, Ontario and district including Wallaceburg save and except supervisors, persons above the rank of supervisor, office staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (22 employees in the unit). (*Having regard to the agreement of the parties*).

0054-76-R: Labourers' International Union of North America, Local 183 (Applicant) v. Greenwin Property Management Ltd. (Respondent).

Unit: "all employees of the Company engaged in cleaning and maintenance at 710 Tretheway Drive and 720 Tretheway Drive, Toronto including resident superintendents, save and except property managers, persons above the rank of property manager, office and clerical staff." (5 employees in the unit). (*Having regard to the agreement of the parties*).

0055-76-R: Labourers International Union of North America, Local Union #493 (Applicant) v. Donalco Services Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent within a radius of thirty-five miles from the City of Sudbury Federal Building, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

0060-76-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. G. Scioscia Limited General Contractor (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Regional Municipality of Ottawa – Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit).

0066-76-R: Canadian Chemical Workers Union (Applicant) v. Custom Converters Printers Limited (Respondent) v. Employees (Objectors).

Unit: "all employees of the respondent at its plant in Mississauga, Ontario, save and except foremen, those above the rank of foreman, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (32 employees in the unit). (*Having regard to the agreement of the parties*).

0073-76-R: International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Parthenon Electric Limited (Respondent).

Unit: "all electricians and electricians' apprentices in the employ of the respondent in Metropolitan Toronto, the Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (16 employees in the unit).

0074-76-R: International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Keele Electric Company Limited (Respondent).

Unit: "all electricians and electricians' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (11 employees in the unit).

0088-76-R: International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Kroman's Electric Ltd. (Respondent).

Unit: "all electricians and electricians' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (10 employees in the unit).

0101-76-R: United Brotherhood of Carpenters & Joiners of America, Local 2486 (Applicant) v. Romm Construction Company Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in that portion of the District of Algoma south of the 49th parallel of latitude, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).

0106-76-R: International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. G. A. Electrical Company Ltd. (Respondent).

Unit: "all electricians and electricians' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).

0108-76-R: International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Ketter Electric Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all electricians and electricians' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (9 employees in the unit).

Applications Certified Subsequent to Pre-Hearing Vote

1645-75-R: Canadian Union of Operating Engineers (Applicant) v. Silverwood Dairies, Division of Silverwood Industries Limited (Respondent) v. Retail, Wholesale and Department Store Union, Local 440 (Intervener).

Unit: "all employees of the respondent in Metropolitan Toronto at the Dupont Street Branch Plant, garage, West Toronto Branch, East Toronto Branch, Metropolitan District, Davenport Road location, and any other operation within the Toronto Metropolitan District, save and except Chief Engi-

neer, Foremen, Milk Route Foremen, persons above the rank of Chief Engineer, Foreman, and Milk Route Foreman, Territory Salesmen, Office Staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (251 employees in the unit). (*Having regard to the foregoing*).

Number of names of persons on voters list		255
Number of persons who cast ballots	229	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	159	
Number of ballots marked in favour of intervener	69	

1708-75-R: Canadian Chemical Workers Union (Applicant) v. Diamond Shamrock Canada Ltd. Process Chemicals Division (Respondent) v. International Chemical Workers Union, Local 552 (Incumbent Trade Union).

Unit: "all of the Company's employees at its premises at 123 St. George Street, London, Ontario, save and except foremen, persons above the rank of foreman, laboratory department staff, office and sales staff, persons regularly employed for not more than twenty-four (24) hours per week and students employed during the vacation period." (11 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on list as originally prepared by employer		11
Number of persons who cast ballots	11	
Number of ballots marked in favour of applicant	11	
Number of ballots marked in favour of Incumbent Trade Union	0	

1724-75-R: Canadian Chemical Workers Union (Applicant) v. Canada Sand Papers Limited (Respondent) v. Teamsters Local 879 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Intervener #1) v. International Chemical Workers Union and its Local 652 (Intervener #2).

Unit: "all employees of the respondent save and except Assistant Foremen, persons above the rank of Assistant Foreman, Laboratory employees, Watchmen and Stationary Engineers and helpers, office and sales staff, persons regularly employed for not more than twenty-four hours per week and guards as defined in the Ontario Labour Relations Act." (166 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on list as originally prepared by employer		169
Number of names of persons on revised voters' list	166	
Number of persons who cast ballots	136	
Number of ballots marked in favour of applicant	128	
Number of ballots marked in favour of intervener #2	8	

1772-75-R: Canadian Chemical Workers Union (Applicant) v. Canadian Pittsburgh Industries, A Division of PPG Industries Canada Ltd. (London Mirror Fabrication Plant) (Respondent) v. International Chemical Workers Union Local 172 (Incumbent Trade Union).

Unit: "all employees of the respondent at London, save and except executive officers, office staff, plant guards, foremen and those above the rank of foreman." (43 employees in the unit).

Number of names of persons on voters' list		42
Number of persons who cast ballots		41
Number of ballots marked in favour of applicant	39	
Number of ballots in favour of Incumbent Trade Union	2	

1786-75-R: Canadian Union of Public Employees (Applicant) v. Versa-services Limited (Respondent) v. Canadian Union of General Employees (Incumbent Trade Union).

Unit: "all employees of the Respondent at Hillcrest Hospital, Toronto, employed in the Housekeeping Department save and except manager, supervisor, persons above the rank of supervisor, persons regularly employed for not more than twenty-four (24) hours per week and students employed during the school vacation period." (11 employees in the unit). (*Having regard to the agreement of the parties*).

Number of persons on voters list as originally prepared by the employer		8
Number of persons who cast ballots		6
Number of ballots marked in favour of applicant	6	
Number of ballots marked in favour of intervener	0	

1845-75-R: International Woodworkers of America (Applicant) v. Allatt Limited (Respondent).

Unit: "all employees of the respondent at its manufacturing and distribution centre in Downsview, Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office, sales and technical staff, persons regularly employed for not more than twenty-four (24) hours per week and students employed during the school vacation period." (125 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on revised voters' list		116
Number of persons who cast ballots		111
Number of ballots marked in favour of applicant	75	
Number of ballots marked against applicant	36	

Applications Certified Subsequent to Post-Hearing Vote

1150-75-R: Ontario Nurses' Association (Applicant) v. Glengarry Memorial Hospital (Respondent).

Unit #2: "all registered and graduate nurses employed in a nursing capacity for not more than twenty-four hours per week, at Glengarry Memorial Hospital, Alexandria, save and except head nurses and/or supervisor." (15 employees in the unit).

Number of persons on revised voters' list		16
Number of persons who cast ballots		9
Number of ballots marked in favour of applicant	9	
Number of ballots marked against applicant	0	

(Bargaining Unit #1 – See Bargaining Units Certified – No Vote Conducted).

1563-75-R: Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers (Applicant) v. Charles Wilson Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent working at or out of its warehouse in Hamilton, save and except foremen, persons above the rank of foremen, office staff and students employed during the school vacation period." (12 employees in the unit).

Number of names of persons on list as originally prepared by employer		12
Number of persons who cast ballots	12	
Number of ballots marked in favour of applicant	8	
Number of ballots marked against applicant	4	

1580-75-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. Vitafoam Products Canada Limited (Respondent).

- and -

1581-75-R: United Electrical, Radio and Machine Workers of America, (UE) (Applicant) v. Pre Fab Cushioning Products Limited (Respondent) v. Oil & Gas Technicians, Service, Domestic and General Workers Union, Local 1267 (Intervener).

Unit: "all employees of Vitafoam Products Canada Limited and Pre Fab Cushioning Products Limited at Metropolitan Toronto, save and except foremen and persons above the rank of foreman, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (136 employees in the unit).

Number of persons on revised voters' list		116
Number of persons who cast ballots	107	
Ballots segregated and not counted	4	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	75	
Number of ballots marked in favour of intervener	27	

1750-75-R: International Union of Operating Engineers, Local 793 (Applicant) v. Geo. W. Crothers (1965) Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent working at and out of Sault Ste. Marie, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff, and students employed during the school vacation period." (9 employees in the unit).

Number of names of persons on voters' list as originally prepared by the employer		8
Number of persons who cast ballots	9	
Ballots segregated and not counted	1	
Number of ballots marked in favour of applicant	5	
Number of ballots marked against applicant	3	

APPLICATIONS FOR CERTIFICATION DISMISSED

No Vote Conducted

1030-75-R: Incom Employees' Union (Applicant) v. Incom Construction Co. Ltd. (Respondent) v. Labourers' International Union of North America, Local 1081 (Intervener #1) v. Local 18 United Brotherhood of Carpenters and Joiners of America (Intervener #2) v. Western Ontario District

Council, on behalf of Local 1946 and 2222 of the United Brotherhood of Carpenters and Joiners of America (Intervener #3) v. Local 1669, The United Brotherhood of Carpenters and Joiners of America (Intervener #4) v. Local 38, The United Brotherhood of Carpenters and Joiners of America (Intervener #5) v. The Carpenters District Council of Toronto and Vicinity, on behalf of Locals 27, 666, 681, 1133, 1747, 1963, 3227, 3233 of the United Brotherhood of Carpenters and Joiners of America (Intervener #6) v. United Brotherhood of Carpenters and Joiners of America Local 38 (Intervener #7) v. Grand River Valley District Council, on behalf of Locals 498, 949, 1940 and 2173, United Brotherhood of Carpenters and Joiners of America (Intervener #8) v. Weston Ontario District Council, United Brotherhood of Carpenters & Joiners of America (Intervener #9). (21 employees).

1667-75-R: Ontario Taxi Association (Applicant) v. Seven-Eleven Taxi Ltd. (Respondent). (32 employees).

1882-75-R: Grand River Valley District Council of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Vanbots Construction Co. Ltd (Respondent). (11 employees).

1895-75-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. Ellis Don Limited (Respondent). (8 employees).

1933-75-R: Labourers' International Union of North America, Local 1081 (Applicant) v. Incom Construction Co. Ltd. (Respondent). (15 employees).

0011-76-R: Labourers' International Union of North America, Local 183 (Applicant) v. Greenwin Property Management Ltd. (Respondent). (9 employees).

0012-76-R: Labourers' International Union of North America, Local 183 (Applicant) v. Greenwin Property Management Ltd. (Respondent). (8 employees).

0043-76-R: Canadian Chemical Workers Union (Applicant) v. Canadian Pittsburgh Industries, A Division of PPG Industries Canada Ltd. (London (31) Branch) (Respondent) v. International Brotherhood of Painters and Allied Trades Local 1783 (Intervener). (7 employees).

0086-76-R: Labourers' International Union of North America Local 1036 (Applicant) v. George Ryder Construction Limited (Respondent v. Group of Employees (Objectors)). (5 employees).

Certification Dismissed Subsequent to Pre-Hearing Vote

1728-75-R: United Steelworkers of America (Applicant) v. McGraw Edison of Canada Limited Power System Division (Respondent) v. Group of Employees (Objectors).

Voting Constituency: "All office, clerical and technical employees of the respondent in Metropolitan Toronto, save and except supervisor, persons above the rank of supervisor, secretary to general manager, secretary to personnel manager and personnel assistant." (138 employees). (*clarity note* - see Report of full decision [1976] OLRB Rep. April.).

Number of names of persons on list as originally prepared by employer		128
Number of persons who cast ballots	122	
Ballots segregated and not counted	4	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	45	
Number of ballots marked against applicant	72	

1777-75-R: Canadian Union of Operating Engineers (Applicant) v. York University (Respondent) v. International Union of Operating Engineers Local 796 (Intervener).

Voting Constituency: "All stationary Engineers and those persons primarily engaged as their Helpers, employed by the Respondent in Metropolitan Toronto, save and except foremen and persons above the rank of foreman and those persons covered by existing collective agreements." (23 employees).

Number of names of persons on voters list as originally prepared by the employer		22
Number of persons who cast ballots	21	
Number of spoiled ballots	2	
Number of ballots marked in favour of applicant	8	
Number of ballots marked in favour of intervener	11	

1799-75-R: Service Employees International Union, Local 532 A.F. of L., C.I.O., C.L.C. (Applicant) v. Regional Municipality of Hamilton-Wentworth (Respondent).

Voting Constituency: "All employees of the respondent (working at Wentworth Lodge) in the Town of Dundas, save and except professional nursing staff, supervisors, persons above the rank of supervisor, office staff, adjuvant, persons regularly employed for not more than 24 hours per week students employed during the school vacation period, and students employed pursuant to a co-operative training programme." (65 employees).

Number of names of persons on revised voters' list		65
Number of persons who cast ballots	57	
Number of ballots marked in favour of applicant	22	
Number of ballots marked against applicant	35	

1807-75-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. Neo Industries Limited (Respondent) v. Oil & Gas Technicians, Service, Domestic and General Workers Union, Local 1267 (Intervener).

Voting Constituency: "All employees of the respondent company in Stoney Creek, save and except foremen, persons above the rank of foreman, office and sales staff." (12 employees). (*The Board further directed that the ballot box containing all the ballots cast during the course of the representation vote be sealed and not counted pending the further direction of the Board.*)

Number of names of persons on voters' list		13
Number of persons who cast ballots	13	
Number of ballots excluding segregated ballots cast by persons whose names appear on voters' list	13	
BALLOT BOX SEALED		

1814-75-R: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local 599 (Applicant) v. Simcoe Mechanical Contracting Ltd. (Respondent) v. Christian Labour Association of Canada (Intervener).

Voting Constituency: "All plumbers, plumbers' apprentices steamfitters, steamfitters' apprentices, welders and welders' apprentices in the employ of the respondent in Simcoe County, District of Muskoka, Townships of Rama, Mara and Thorah, in the County of Ontario and in the Townships of Carling, Ferguson, McDougall, McKellar, Christie, Foley, Conger and Humphrey, in the District of Parry Sound, including the Municipalities contained therein, save and except non-working foremen and persons above the rank of non-working foreman." (17 employees).

Number of names of persons on list as originally prepared by employer		18
Number of persons who cast ballots	18	
Ballots segregated and not counted	2	
Number of ballots marked in favour of applicant	3	
Number of ballots marked in favour of intervener	13	

Certification Dismissed Subsequent to Post-Hearing Vote

1657-75-R: Canadian Chemical Workers Union (Applicant) v. Gasboy of Canada Limited (Respondent).

Unit: "all production employees of the Respondent in its plant at London, Ontario Save and except supervisors and persons above the rank of supervisor, students employed during the school vacation period, and persons regularly employed for not more than 24 hours per week." (18 employees in the unit).

Number of names of persons on revised voters' list		16
Number of persons who cast ballots	16	
Number of ballots marked in favour of applicant	6	
Number of ballots marked against applicant	10	

APPLICATIONS FOR CERTIFICATION WITHDRAWN

0430-75-R: Labourers' International Union of North America (Applicant) v. High City Holdings (Respondent). (6 employees).

1836-75-R: Pharmacists and Professional Employees Union, Local 207 (Applicant) v. W.W. MacQuillen Drug Store (Respondent). (4 employees).

1869-75-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Northern Wood Home Canadian Limited (Respondent). (11 employees).

1871-75-R: Grand River Valley District Council of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Internorth Construction Co. Ltd. (Respondent). (2 employees).

1901-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. Bridgeview Heights Limited, carrying on business as City Terrace North and Morningside Court (Respondent) v. Group of Employees (Objectors). (3 employees).

1925-75-R: Gulf Oil Canada Employees' Collective Bargaining Association Clarkson Branch Council (Applicant) v. Gulf Oil Canada (Central Division) (Respondent). (71 employees).

1932-75-R: United Brotherhood of Carpenters and Joiners of America Local 494 (Applicant) v. Random Builders Ltd. (Respondent). (2 employees).

1935-75-R: Grand River Valley District Council of The United Brotherhood of Carpenters and Joiners of America (Applicant) v. Incom Construction Co. Ltd. (Respondent). (23 employees).

0038-75-R: Resilient Floor Workers Local Union 2695, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Sterling Tile and Carpet (Respondent). (13 employees).

0059-75-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. G. Scioscia Limited General Contractor (Respondent). (4 employees).

0063-76-R: Labourers' International Union of North America Local Union No. 597 (Applicant) v. Cosmic Construction Ltd. (Respondent) v. Group of Employees (Objectors). (11 employees).

0064-76-R: Labourers' International Union of North America, Local 183 (Applicant) v. Mount Citadel, 701 Don Mills Road, c/o City Park Apts. Ltd., 484 Church Street, Suite 115, Toronto, Ontario, M4Y 2C7 (Respondent). (3 employees).

0162-76-R: Labourers' International Union of North America, Local 183 (Applicant) v. S & N Concrete Contractors Limited (Respondent). (3 employees).

0179-76-R: Labourers' International Union of North America, Local 183 (Applicant) v. Greenwin Property Management Ltd. (Respondent). (6 employees).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

1545-75-R: David Gordon Jehan, John Richard Secord, Kenneth Edward Secord, Peter Gruszewski, Brian Nelson Dankert and Ivan Joseph Proulx (Applicants) v. International Brotherhood of Painters and Allied Trades, Local 1890 (Respondent). (*Granted*).

Unit: "all the employees of Gould Outdoor (Posters) Ltd. in the St. Catharines Plant, save and except supervisors and those above the rank of supervisor, office and sales staff and students hired during the school vacation period." (6 employees in the unit).

Number of names of persons on list as originally prepared by employer		6
Number of persons who cast ballots		6
Number of ballots marked in favour of respondent	0	
Number of ballots marked against respondent	6	

1788-75-R: Sharon Laviolette for the group of Employees Iroquois Hotel, Iroquois Falls, Ontario (Applicant) v. United Steelworkers of America Local – 13911 (Respondent). (5 employees). (*Dismissed*).

1853-75-R: Rexdale Heating Limited (Applicant) v. Sheet Metal Workers International Association, Local Union 285 (Respondent) v. Group of Employees (Objectors). (4 employees). (*Terminated*).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL

1896-75-U: Pigott Construction Limited (Applicant) v. C. W. Howard, United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union No. 46, A. Reinert, G. Goetz, T. Moase, D. Pasley, R. Gemmill, F. Batstone, C. Herder, K. Herder, and J. Coghlin (Respondents). (*Direction*).

0027-76-U: Brewers' Warehousing Company Limited (Applicant) v. The Persons Named in Schedules "A" and "B" To This Application (Respondents). (*Withdrawn*).

0048-76-U: Harrison-Martyn Construction Limited (Applicant) v. 1. Da Vino Ongario, 2. Antonio Minelli, 3. Dino Benati, 4. Anthony Stumpf, 5. M. Alzner Contractors Ltd., 6. John Hann, 7. Pat Fagan, 8. Walter Jones, 9. United Brotherhood of Carpenters and Joiners of America, Local 1946, 10. Kenneth Jackson, 11. Bricklayers International Union #5, 12. J. Kenneth Martin, 13. Bill Fisher Excavating, 14. International Union of Operating Engineers, Local Union 793, A.F.L.-C.I.O., 15. Local 593 United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Respondents) v. Christian Labour Association of Canada (Intervener). (*Direction*).

0053-76-U: The Budd Automotive Company of Canada Limited (Applicant) v. The International Union United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) and its Local 1451 (hereinafter called the "Union") and the members of the Union employed by the Applicant, including those respondents set out in Schedules "A" and "B" (Respondent). (*Withdrawn*).

0135-76-U: Electrical Contractors Association of Toronto on behalf of Ainsworth Electric Co. Limited (Applicant) v. Local Union 353, International Brotherhood of Electrical Workers, Warren Chapman, Morley Hughes and Steve Weslak (Respondents). (*Withdrawn*).

0167-76-U: The Essex County Roman Catholic Separate School Board (Applicant) v. Service Employees' Union Local 210, (Affiliated with Service Employees' International Union), AFL-CIO-CLC and Anthony E. Borg, Randy Reaume, William Jackson and Raymond Bosse (Respondents). (*Withdrawn*).

APPLICATIONS FOR CONSENT TO PROSECUTE

1630-75-U: Canadian Food and Allied Workers Local Union 175, chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. Paul Poisson, Inc. carrying on business as Amherstburg IGA Store (Respondent). (*Terminated*).

1711-75-U: Service Employees Union, Local 204 (Applicant) v. Birchcliffe Nursing Homes Limited (Respondent). (*Withdrawn*).

1789-75-U: John deP. Wright (Applicant) v. Clarence Dungey (Respondent). (*Dismissed*).

1803-75-U: Local Union No. 304, Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers (Complainant) v. Chateau-Gai Wines Company Limited (Respondent). *(Withdrawn)*.

1812-75-U: Canadian Food and Allied Workers Local 175, Chartered by Amalgamated Meat Cutters and Butcher Workmen of North America, A.F.L. C.I.O., C.L.C. (Applicant) v. Paul Poisson, Inc. carrying on business as Amherstburg IGA Store (Respondent). *(Terminated)*.

0030-76-U: United Plant Guard Workers, Local 1962 (Complainant) v. Rank City Wall Canada Limited (Respondent). *(Withdrawn)*.

COMPLAINTS UNDER SECTION 79 (UNFAIR LABOUR PRACTICE)

1285-75-U: Roger Dubois (Complainant) v. Ernie's Signs Limited (Respondent). *(Granted)*.

1479-75-U: United Brotherhood of Carpenters and Joiners of America (Complainant) v. Whitby Boat Works Limited (Respondent). *(Withdrawn)*.

1620-75-U: Mr. Jack Chapelas (Complainant) v. Coca-Cola Limited (Ottawa) (Respondent). *(Withdrawn)*.

1621-75-U: Jack Chapelas (Complainant) v. Coca-Cola Limited (Ottawa) (Respondent). *(Withdrawn)*.

1624-75-U: Mr. Jack Chapelas (Complainant) v. Coca-Cola Limited (Ottawa) (Respondent). *(Withdrawn)*.

1625-75-U: Mr. Jack Chapelas (Complainant) v. Coca-Cola Limited (Ottawa) (Respondent). *(Withdrawn)*.

1675-75-U: James Peddle (Complainant) v. I.A.T.S.E. Local 173 (Respondent). *(Withdrawn)*.

1707-75-U: Mrs. Betty Navratil (Complainant) v. Union – CUPE, Local 79 (Respondent). *(Dismissed)*.

1753-75-U: James Stanley Arnold (Complainant) v. Chatham & District Ambulance Service Limited (Respondent) v. London Ambulance Attendants' Association (Intervener). *(Granted)*.

1773-75-U: Local 251, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW) (Complainant) v. North American Plastics Company Limited (Respondent). *(Granted)*.

1785-75-U: Oil Chemical and Atomic Workers International Union (Complainant) v. Jim Wiltshire (Respondent). *(Dismissed)*.

1796-75-U: Kraan, John, (Complainant) v. United Steelworkers of America, Local 6571 (Respondent) v. Lake Ontario Steel Company Limited (Intervener). (*Granted*).

1797-75-U: Mrs. Ruth Geisler (Complainant) v. Electrical Workers Local 1590, and Philips Electronics Industries Ltd. (Respondents). (*Withdrawn*).

1798-75-U: William Campbell (Complainant) v. U.A.W. Local 127 (Respondent). (*Dismissed*).

1805-75-U: Dan Sergeant (Complainant) v. U.A.W. Local 1859 (Respondent). (*Dismissed*).

1820-75-U: Franklin R. Fox (Complainant) v. Local 186 CIWU (Respondent). (*Withdrawn*).

1834-75-U: Amalgamated Meat Cutters and Butcher Workmen of North America, A.F.L. - C.I.O. C.L.C. (Complainant) v. Robin Hood Multifoods Limited (Respondent). (*Withdrawn*).

1841-75-U: Geraldine Hann (Complainant) v. Service Employees Union Local 204 (Respondent). (*Withdrawn*).

1844-75-U: United Cement, Lime and Gypsum Workers International Union, Local 487 (Complainant) v. General Concrete of Canada Ltd. (Respondent). (*Withdrawn*).

1846-75-U: Algoma University College Faculty Association (Complainant) v. Algoma University College (Respondent). (*Withdrawn*).

1861-75-U: Roy Fells (Complainant) v. Local 89 U.A.W., C.I.O. (Respondent). (*Withdrawn*).

1866-75-U: Canadian Chemical Workers Union (Complainant) v. Shamrock Chemicals Limited (Respondent). (*Dismissed*).

1898-75-U: Harold L. Clarke (Complainant) v. Pres. & Shop Stwd. Local 727, United Association of Plumbing & Pipefitting Industry of Can. (Respondent). (*Withdrawn*).

1916-75-U: Warehousemen and Miscellaneous Drivers, Local Union No. 419 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Complainant) v. F. W. Woolworth Co. Ltd. (Respondent). (*Withdrawn*).

0003-76-U: D.L. Noble, Arnold Marsman and Arthur Dix (Complainants) v. Wm. Sidell, Wm. Stefanovitch and T.G. Harkness (Respondents). (*Dismissed*).

0005-76-U: Upholsterers International Union of North America AFL CIO (Complainant) v. Craftline Industries Ltd. (Respondent). (*Withdrawn*).

0031-76-U: Local Union #1678 International Brotherhood of Electrical Workers (Complainant) v. Public Utilities Commission of the City of Kingston (Respondent). (*Withdrawn*).

0032-76-U: United Cement, Lime and Gypsum Workers' International Union, Local 394 (Complainant) v. T. C. G. Materials Limited (Respondent). (*Withdrawn*).

0033-76-U: United Plant Guard Workers, Local 1962 (Applicant) v. Rank City Wall Canada Limited (Respondent). (*Withdrawn*).

0044-76-U: United Cement, Lime & Gypsum Workers International Union Local 394 (Complainant) v. T. C. G. Materials Limited (Respondent). (*Withdrawn*).

0052-76-U: Sammy Lovano (Complainant) v. Pre-Fab Cushioning & Vita Foam Limited (Respondent). (*Withdrawn*).

0068-76-U: John Christopher (Complainant) v. Pre-Fab Cushioning Prod. Ltd. (Respondent). (*Withdrawn*).

0184-76-U: Canadian Chemical Workers Union (Complainant) v. Shamrock Chemicals Limited (Respondent). (*Withdrawn*).

APPLICATION UNDER SECTION 39

1757-75-M: Robert K. Woods (Applicant) v. O.H.E.U. Local 1000 (Respondent Trade Union) v. Ontario Hydro (Respondent Employer). (*Dismissed*).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

1835-75-M: The Retail, Wholesale and Department Store Union, Local 440 – A.F.L. – C.I.O. – C.L.C. (Trade Union) v. Abbott Laboratories Limited [Formerly Cow & Gate (Canada) Limited, Brockville, Ontario] (Employer). (*Granted*).

1879-75-M: Laundry, Dry Cleaning and Dye House Workers' International Union, Local 351 (Trade Union) v. Work Wear Corporation of Canada Ltd. (Stericloth Division) (Employer). (*Granted*).

1899-75-M: Laundry, Dry Cleaning and Dye House Workers' International Union, Local 351 (Trade Union) v. The Canadian Linen Supply (Ontario) Limited (Employer). (*Granted*).

1913-75-M: International Union United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) Local 1132 (Trade Union) v. Blackstone Industrial Products Limited (Employer). (*Granted*).

0047-76-M: Retail, Wholesale and Department Store Union AFL:CIO:CLC (Trade Union) v. Work Wear Corporation of Canada Ltd., formerly Sunshine Uniform Supply Company Limited (Employer). (*Granted*).

APPLICATION UNDER SECTION 55

1507-75-R: Retail, Wholesale & Dairy & General Workers Union and its Local 440 formerly Silverwoods Dairies Ltd., St. Catharines, Ontario (Applicant) v. United Electrical, Radio & Machine Workers of America (UE) Welland and its Local 517, representing North Side Dairy Ltd. (Respondent). (*Granted*).

Unit: "all employees of the North Side Dairy Ltd. employed at or working out of its branch in the City of Welland, save and except: (a) Office staff, Sales Supervisors, foremen, persons above the rank of foremen and employees of the company employed in a supervisory or confidential capacity or having authority to employ, discharge or discipline employees, and (b) Persons hired for part-time, working twenty-four hours or less per week and, (c) Students and other employees hired for the vacation period, relief or seasonal work, provided however that any such employee employed continuously for a period of more than four (4) months shall be included in the bargaining unit. Such employees, whose employment continues unbroken beyond October 1st, upon completion of probationary period, shall be included in the bargaining unit."

Number of names of persons on list as originally prepared by employer		22
Number of persons who cast ballots	18	
Number of ballots marked in favour of applicant	2	
Number of ballots marked in favour of respondent	16	

JURISDICTIONAL DISPUTE

1922-75-JD: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Complainant) v. Pigott Construction Limited (Respondent). (*Withdrawn*).

APPLICATION FOR DETERMINATION UNDER SECTION 95(2)

1783-75-M: Hanmer Bus Lines Inc. (Employer) v. Canadian Union of Public Employees, and its Local 895 (Trade Union). (*Withdrawn*).

REFERENCES TO BOARD PURSUANT TO SECTION 96

1558-75-M: High City Holdings (Employer) v. Labourers' International Union of North America, Local 183 (Respondent). (*Withdrawn*).

1848-75-M: The Sisters of St. Joseph of the Diocese of London in Ontario (Employer) v. The Ontario Public Service Employees Union (Trade Union). (*Granted*).

APPLICATIONS UNDER SECTION 112a

1856-75-M: United Brotherhood of Carpenters and Joiners of America Local Union 38 (Applicant) v. Gillespie Drywall (Respondent). (*Granted*).

1876-75-M: United Brotherhood of Carpenters & Joiners of America (Applicant) v. K. H. Preston Limited (Respondent). (*Terminated*).

1907-75-M: Labourers' International Union of North America, Local 506 and Labourers' International Union of North America, Ontario Provincial District Council (Applicants) v. Ontario Precast Concrete Manufacturers Association and Sandrin Precast Limited (Respondents). (*Withdrawn*).

0034-76-M: The Carpenters' District Council of Toronto and Vicinity on behalf of Local Union 1190, United Brotherhood of Carpenters and Joiners of America (Applicant) v. O and C Carpentry (Respondent). (*Granted*).

0089-76-M: United Brotherhood of Carpenters and Joiners of America Local Union No. 38 (Applicant) v. Modern-Aire Motel (Respondent). (*Withdrawn*).

0119-76-M: International Brotherhood of Electrical Workers, Local Union 353 (Complainant) v. Ainsworth Electric Company Limited and Electrical Contractors Association of Toronto (Respondents). (*Withdrawn*).

0154-76-M: Labourers' International Union of North America, Local 183 (Applicant) v. Power Cable Installations (Toronto) Limited (Respondent). (*Withdrawn*).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

0974-75-R: Ontario Nurses' Association (Applicant) v. Westmount Hospital (Respondent). (*Request Denied*).

1671-75-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. Trench Electric Limited (Respondent) v. Group of Employees (Objectors). (*Request Denied*).

1744-75-R: International Molders & Allied Workers Union (Applicant) v. Union Electric Supply Co. Limited (Respondent) v. Group of Employees (Objectors). (*Request Denied*).

1356-75-U: Pattern Makers League of North America, Toronto Association (Complainant) v. Modern Pattern Works Ltd. (Respondent). (*Section 79*). (*Request Denied*).

0945-75-M: The Toronto Building and Construction Trades Council (Applicant) v. Napev Construction Limited and Vepan Leaseholds Limited (Respondents). (*Section 112a*). (*Request Denied*).



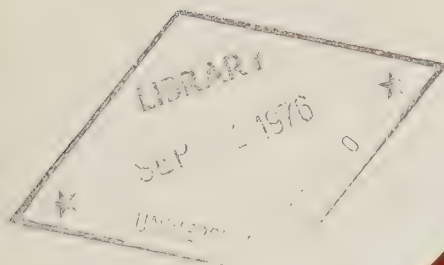
Labour
Relations Board

Decisions May 76

Government
Publications

20NLR

054



ONTARIO LABOUR RELATIONS BOARD

Chairman D.D. CARTER

Alternate Chairman RORY F. EGAN

Vice-Chairmen F.V. BOSCARIOL
K.M. BURKETT
G.S.P. FERGUSON, Q.C.
R.A. FURNESS
D.H. KATES
I.C.A. SPRINGATE

Members H.J.F. ADE
D.B. ARCHER
J.D. BELL
E. BOYER
F. KEEN
A. GRIBBEN
L. HEMSWORTH
A. HERSHKOVITZ
O. HODGES
F.W. MURRAY
P.J. O'KEEFFE
J.E.C. ROBINSON, Q.C.
N. SATTERFIELD
H. SIMON
R. WHITE
W.H. WIGHTMAN

Executive Assistant to the Chairman S.D. SAXE *Registrar* A.M. BRUNSKILL

Solicitor R.O. MACDOWELL

Editor, Monthly Report S.D. SAXE

**ONTARIO
LABOUR RELATIONS BOARD
REPORTS**

**A Monthly Series of Decisions from the
Ontario Labour Relations Board**

Cited [1976] OLRB REP.

CASES REPORTED

Arcan Eastern Ltd. And BSOIW, L U 721	241
Cdn. Industries Ltd. Re USA L 13704	199
Coulter & Sons (Windsor) Ltd. Re TCWH L 880 (aff'l with Int'l Brotherhood of Teamsters etc.)	245
Day Signs Ltd. & Int'l Bro. of Painters & Allied Trades, L 1630 Re IBEW L U 353	217
Diebold Co. of Canada Ltd., The, Re UE And Group of Employees	237
Graphic Centre (Ont.) Inc. Re Graphic Arts Int'l U.L 12-L	221
Leons Furniture Ltd. Re Retail Clerks U., L 206	232
N. American Plastics Co. Ltd. Re L 251, UAW	210
Onward Mfg. Co. Ltd. Re L U 2345 IBEW, AFL CIO CLC and Onward Mfg. Co. Ltd. Re L U 2345 IBEW, AFL CIO CLC	219
Robin Hood Multifoods Ltd. Re Amalgamated Meat Cutters & Butcher Workmen of N. America, A.F.L.-C.I.O.-C.L.C. And Group of Employees	250
Spramotor Ltd. Re TCWH L 141 aff'l with TCWH	215

INDEX OF CASES

- Accreditation – S116(4) – Effect of trade union gaining bargaining rights for an Employer in a Specific Board Area where an accreditation exists for an employers Association and a Collective Agreement has been signed with the Association for a larger area.
- ARCAN EASTERN LIMITED v. INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL AND ORNAMENTAL IRONWORKERS, LOCAL UNION 721 241
- Bargaining Unit – Whether the Board will exclude from a full time unit Seasonal employees.
- TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS LOCAL 141 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN & HELPERS OF AMERICA v. SPRAMOTOR LTD. 215
- Bargaining Unit – Whether the Board will include full and part time employees in a single unit – Whether the Board will grant an all employee unit comprised of Salesmen, Warehousemen, office workers and cleaners.
- RETAIL CLERKS UNION, LOCAL 206 v. LEONS FURNITURE LIMITED ... 232
- Certification – S7(a) – Whether the employers violation of the Act such that the true wishes of the employees are not likely to be ascertained.
- AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, A.F.L.-C.I.O.-C.L.C. v. ROBIN HOOD MULTIFOODS LIMITED v. GROUP OF EMPLOYEES 250
- Collective Agreement – Duty To Bargain In Good Faith – Whether a collective agreement must be a single formal document – Whether agreement must be signed – Whether a signed memorandum of settlement meets requirement of signatures – Whether signed offer and signed return letter meet requirement of signatures – S14 – Whether the parties must make all demands known early in bargaining process.
- GRAPHIC ARTS INTERNATIONAL UNION LOCAL 12-L v. GRAPHIC CENTRE (ONTARIO) INC 221
- Collective Agreement – Union security provision – S36a – Whether the section may be relied upon in requesting inclusion of a security clause in an existing collective agreement – Whether the section applies to agreements existing at time section came into force.
- LOCAL 251, INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) v. NORTH AMERICAN PLASTICS COMPANY LIMITED 210
- Discharge For Union Activity – Effect of S79(4a) where evidence of both parties is unsatisfactory.
- TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS UNION, LOCAL 880, (AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS ETC.) v. COULTER & SONS (WINDSOR) LTD 245

Duty To Bargain In Good Faith – Collective Agreement – Whether a collective agreement must be a single formal document – Whether agreement must be signed – Whether a signed memorandum of settlement meets requirement of signatures – Whether signed offer and signed return letter meet requirement of signatures – S14 – Whether the parties must make all demands known early in bargaining process.	
GRAPHIC ARTS INTERNATIONAL UNION LOCAL 12-L v. GRAPHIC CENTRE (ONTARIO) INC	221
Duty To Bargain In Good Faith – S79 – Effect of Requirement of recognition – Effect of requirement of rational discussion – Effect of failure to comply with duty to bargain in good faith having been brought within Board's remedial jurisdiction – Whether the parties must enter into full discussion on matters in dispute – Effect of anti-inflation guidelines on full discussion of monetary items.	
UNITED STEELWORKERS OF AMERICA ON BEHALF OF LOCAL 13704 v. CANADIAN INDUSTRIES LIMITED	199
Evidence – Whether the Board will consider a decision by another panel in a certification application that a petition was unacceptable as evidence of employer anti-union activity in a S79 complaint.	
LOCAL UNION 2345 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL CIO CLC v. ONWARD MANUFACTURING COMPANY LIMITED and LOCAL 2345 INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, AFL CIO CLC v. ONWARD MANUFACTURING COMPANY LIMITED	219
Jurisdictional Dispute – Whether the complainant must have requested an assignment of the work before making a complaint to the Board – Whether demand made to construction association that work be done by members of complainant union a request for assignment within meaning of the Act.	
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS LOCAL UNION 353 v. DAY SIGNS LIMITED AND INTERNATIONAL BROTHERHOOD OF PAINTERS AND ALLIED TRADES, LOCAL 1630	217
Membership Evidence – Petition – Whether the Board may consider the effect of a Petition – Effect of a petition on the membership evidence – S7(2) – Whether the Act gives the Board the authority to order a vote because of a petition.	
UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) v. THE DIEBOLD COMPANY OF CANADA LIMITED v. GROUP OF EMPLOYEES	236
Petition – Membership Evidence – Whether the Board may consider the effect of a Petition – Effect of a Petition on the membership evidence – S7(2) – Whether the Act gives the Board the authority to order a vote because of a petition.	
UNITED ELECTRICAL, RADIO AND MACHINE WORKERS OF AMERICA (UE) v. THE DIEBOLD COMPANY OF CANADA LIMITED v. GROUP OF EMPLOYEES	237

S79 – Duty To Bargain In Good Faith – Effect of Requirement of recognition – Effect of requirement of rational discussion – Effect of failure to comply with duty to bargain in good faith having been brought within Board’s remedial jurisdiction – Whether the parties must enter into full discussion on matters in dispute – Effect of anti-inflation guidelines on full discussion of monetary items.

UNITED STEELWORKERS OF AMERICA ON BEHALF OF LOCAL 13704 v.
CANADIAN INDUSTRIES LIMITED

1725-75-U United Steelworkers of America on behalf of Local 13704
(Complainant) v. **Canadian Industries Limited** (Respondent).

Duty To Bargain In Good Faith – S79 – Effect of Requirement of recognition – Effect of requirement of rational discussion – Effect of failure to comply with duty to bargain in good faith having been brought within Board’s remedial jurisdiction – Whether the parties must enter into full discussion on matters in dispute – Effect of anti-inflation guidelines on full discussion of monetary items.

BEFORE: D.D. Carter, Chairman, and Board Members O. Hodges and J.E.C. Robinson, Q.C.

APPEARANCES: *L.A. MacLean and S.R. Guillet for the complainant; C.G. Riggs, R.J. Gullivan, P. Metayer and H. Sweet for the respondent.*

DECISION OF D.D. CARTER, CHAIRMAN, AND BOARD MEMBER O. HODGES:
May 7, 1976

1. This is a complaint under section 79 of *The Labour Relations Act*. The essence of this complaint is the allegation that the respondent has not complied with the statutory obligation to bargain in good faith. The applicant seeks certain declarations from the Board and, in addition, an order directing the respondent to commence to bargain in good faith on the union’s proposals.
2. The collective bargaining negotiations out of which this complaint arose were described by S.R. Guillet, a staff representative employed by the applicant. This account of the negotiations was not refuted to any significant extent by the respondent. What remained in dispute, however, was the legal significance that should be attached to the conduct of the respondent. The applicant argued that the respondent, by the position that it had taken toward the application of the federal anti-inflation guidelines, had failed to bargain in good faith. The respondent, on the other hand, argued that, based on the totality of its conduct during the negotiations, the statutory obligation to bargain in good faith had been satisfied.
3. The chronology of the negotiations, as described by Guillet, comprised the following stages. At or around September 17, 1975, the applicant gave notice to the respondent of its desire to commence negotiations for the renewal of the existing collective agreement which was to expire on December 17, 1975. Shortly afterwards, around September 22, there followed the submission of a written proposal by the applicant. The written proposal was, in fact, a joint submission on behalf of a number of Steelworker bargaining units that dealt with the respondent in both Ontario and Quebec. The co-ordinated bargaining approach was not accepted by the respondent, so that the subsequent negotiations, with one exception, assumed a purely local character. The initial joint submission did contain a considerable number of proposals, many of them dealing with safety and health. As far as monetary issues were concerned, the more important proposals appeared to be the roll-in of the interim increase of 25¢ per hour, an uncapped C.O.L.A. provision, a proposal for a co-operative wage study (C.W.S.), and a call for a substantial wage increase.
4. The first meeting between the applicant and respondent took place on October 20th, very shortly after the announcement of the federal anti-inflation programme. The applicant, at this meeting, undertook to explain its proposals. Discussions lasted for most of

that day and considerable time was spent discussing the proposals concerning safety and health. As for the monetary issues, the respondent asked that discussion on these items be deferred until the anti-inflation guidelines became more clear.

5. A second meeting occurred on October 28th. At that meeting the respondent undertook an elaborate review, with slide presentation, of the benefit package then in existence. The applicant on its part informed the respondent of its intention to apply for conciliation under *The Labour Relations Act*, a precondition for the taking of strike action.

6. At the next meeting, held on November 2nd, the respondent was given a copy of the applicant's formal request for conciliation. A certain amount of the discussion at that meeting concerned an illegal strike that had occurred on October 29th. More important, it was at that meeting that the respondent first indicated its position toward the anti-inflation guidelines by stating that it was unwilling to discuss any proposals in excess of what was allowed by the guidelines.

7. A fourth meeting was held on November 25th, at which time the applicant attempted to explain its proposal on C.W.S. The information on C.W.S. was presented by a specialist on this matter who had come from the Steelworker's national office. The respondent's response was that, because of the guidelines, it would not consider the C.W.S. proposal. In the afternoon of that day, the respondent introduced its first offer. This offer contained two proposals concerning safety, and a proposal for a two-year agreement with an 8% wage increase for the first year, and a promise to resume negotiations on the wage increases "as soon as government regulations on the guidelines [sic] are published and both parties fully understood their application". The respondent explained that the absence of a monetary proposal for the second year was because of its lack of knowledge of the application of the guidelines in the second year. During that same day, a conciliation officer from the Ministry of Labour met with the parties but was unable to effect a settlement. In fact, at this point in the negotiations the parties were a long way from agreement. Although there was some agreement on contract language, the respondent's offer was rejected by the applicant. Subsequent to this meeting, a "no-board" report was issued by the Ministry of Labour, putting the applicant in a position to conduct a legal strike shortly after the expiry of the collective agreement on December 17th.

8. The next meeting occurred on December 19, at which time a second offer from the respondent was discussed. This offer proposed a general wage increase of 11.17 per cent for the first year, and, for the second year, a general wage increase of 8 per cent. The respondent also proposed that if the basic protection factor in the guidelines was increased for the second year, the respondent would adjust the second-year increase to the extent permitted by the Anti-Inflation Board. The respondent at that meeting expressed its willingness to discuss the calculations used in applying the guidelines, but firmly refused to discuss any wage proposal in excess of the guidelines, stating that it felt bound by both the letter and spirit of the guidelines. The applicant, on the other hand, was still asking for the settlement negotiated earlier by the respondent and a Steelworker's local at Copper Cliff prior to the announcement of the guidelines. The general approach taken by the applicant was that negotiations should take place without reference to the guidelines, with any settlement reached then being taken by the parties to the Anti-Inflation Board for its consideration. Given these contrasting approaches, it is not surprising that the parties did not reach agreement at this meeting.

9. The first meeting in 1976 occurred on January 13th. Discussed at this meeting were the proposals from the Steelworker's Co-ordinated Bargaining Committee, contained in a letter dated January 5. The letter dealt with six matters; the earlier co-ordinated proposals, elimination of any differential in wages based on sex, the incorporation of pension and welfare plans into the collective agreement, the method of implementing C.W.S., implementation of C.W.S. with a 12 cent increment between job classes, and wage increases of 18% and 12% for the first and second years respectively. In addition, the letter proposed that, in the event that wages and benefits might be restricted by the order of the anti-inflation administrator, or by the regulations and guidelines themselves, the parties would make joint application to the Anti-Inflation Board, or Anti-Inflation Tribunal, for "the maximum exemption from or allowance over the guidelines on whatever grounds appear to be practicable in light of any such restrictions ...". At that meeting, the parties approached agreement on certain non-monetary issues, but remained apart on monetary matters. The respondent apparently reaffirmed its position that it was unwilling to discuss anything above the guidelines.

10. The next meeting between the parties took place within a slightly different format. There was in existence a welfare committee, which was a structure used by the respondent and the local unions to discuss general trends in benefit plans. A meeting of this committee was convened in Montreal on January 19 to discuss the impact of the anti-inflation guidelines upon benefit plans. Attending at the meeting were representatives from the various local unions negotiating with the respondent, representatives from the parent union, and members of the respondent's industrial relations department. The respondent spent a considerable amount of time at the meeting explaining its calculations on how the guidelines concerning total compensation would affect the benefit plans, and asked those present whether it had overlooked anything in making the calculations. At the same meeting the respondent indicated its intention of standing by any offers already made, and making a joint application to the Anti-Inflation Board in respect of these offers. The respondent, however, apparently indicated its unwillingness to go any further in exceeding the guidelines. Guillet testified that this position was discussed between him and R.J. Gallivan, the respondent's manager of industrial relations at the January 19th meeting, who flatly refused to consider anything in excess of the guidelines, and indicated the respondent's willingness to take a strike on the matter.

11. The negotiations returned to their original format on January 29th. At that meeting, the respondent presented a new offer, much more detailed than its previous offers, which appeared to meet the union's proposal on certain minor items. The parties, however, were still far apart on monetary matters. The respondent's wage offer, compared with its earlier proposal, was reduced from 11.17 per cent to 10.35 per cent for the first year, while for the second year it was increased from 8 per cent to 8.26 per cent. The respondent explained that the earlier offer, based on the interim guidelines, had to be recalculated on the basis of the official regulations, and a slightly lower figure had been reached. The respondent, however, indicated that it was willing to make a joint application for the earlier figure of 11.17 per cent. Discussion of anything further in excess of the guidelines was ruled out by the respondent. On its part the applicant agreed to put the respondent's offer before its members. The offer was taken to the members following the meeting, and rejected.

12. The next, and final, meetings occurred on February 11th and 12th. Agreement on meal allowances and plug-in heaters, both minor items, was reached, but there was no

breakthrough on the major monetary items. The union's request for a meeting with a provincial mediator was rejected by the respondent, which took the position that no useful purpose could be served by such a meeting. No meetings occurred subsequently, and the next development was a news release from the applicant, stating that it had brought the matter before this Board.

13. The respondent's general approach to the anti-inflation guidelines was set out in the testimony of R.J. Gallivan, the respondent's manager of industrial relations. Although Gallivan was not actually present at the negotiations described above, except for the Montreal meeting, he did explain the position taken by the respondent in respect of all its negotiations. The respondent's policy was to base its bargaining position on both the letter and spirit of the guidelines. What this meant was that the respondent based its offers on the formula set out in the regulations under the Anti-Inflation Act, offering the maximum permitted by the formula. The respondent, however, was not prepared to consider anything in excess of these figures. The only exceptions to this approach were those situations where it had already made an offer in excess of the guidelines, either prior to their announcement or based on its earlier interpretation of their effect. The respondent took the position that it would honour these offers by supporting a joint application to the Anti-Inflation Board for an exemption. Gallivan indicated that this approach had been taken in respect of all bargaining units negotiating with the respondent subsequent to the announcement of the anti-inflation guidelines. [Earlier evidence indicated that agreements had been reached at all other bargaining units, except for Brownsburg.] Gallivan admitted that, if the guidelines had not come into force, the respondent would have taken into account other considerations during negotiations. Further, he admitted that, although the respondent's stated position for rejecting the applicant's proposal concerning C.W.S. was the restrictions imposed by *The Anti-Inflation Act*, the respondent had other reasons to reject it, and these reasons might not have been conveyed to the applicant during the negotiations.

14. The resolution of this complaint requires an examination of the content of the duty to bargain in good faith, set out in s.14 of the Act and, equally important, the nature of the Board's remedial authority under s.79 of the Act. These two inquiries cannot be self-contained. Conclusions reached about the content of the duty must necessarily influence a decision as to the appropriate remedy. Conversely, conclusions about the nature of the remedy obviously have some bearing on the content of the duty.

15. The duty to bargain in good faith is set out in the following terms: "...[T]hey [the parties] shall bargain in good faith and make every reasonable effort to make a collective agreement". It is not necessary to enter into a full elaboration of the content of this duty. This task has already been undertaken by the Board in *De Vilbiss (Canada) Ltd.* (March 9, 1976), File No. 1124-75-U. In that decision, the Board made it clear that satisfaction of the duty to bargain in good faith depends on the manner in which negotiations are conducted, and not upon the content of the proposals brought to the bargaining table. To take the latter approach would mean that the Board would be put in the position of an interest arbitrator, having to assess the relative merits of the bargaining proposals of both parties. It is reasonable to assume, therefore, that the legislature did not intend that the obligation to bargain in good faith should be defined by the content of bargaining.

16. Good faith bargaining is then left to be defined in terms of the manner in which collective negotiations should be conducted. The approach taken by the parties, as eviden-

ced by their conduct, becomes important, two factors being of particular significance – one is recognition, the other is the quality of discussion. As was stated in *De Vilbiss (Canada) Ltd., supra*,

The duty reinforces the obligation of an employer to recognize the bargaining agent and, beyond this somewhat primitive purpose, it can be said that the duty is intended to foster rational, informed discussion thereby minimizing the potential for “unnecessary” industrial conflict.

17. Recognition requires each party to approach collective bargaining with the objective of entering into a collective agreement. This means that a failure to reach a collective agreement cannot be motivated by an unwillingness to recognize the other party. The requirement to recognize the other party does not mean, however, that a party can establish a failure to bargain in good faith by simply proving that its terms were not accepted by the other party. This type of proof, going to content of the proposals rather than to the conduct of the negotiations, would be insufficient to establish a lack of recognition.

18. The conduct of the negotiations is not only judged in terms of mutual recognition but also in terms of quality of discussion. This latter factor is somewhat broader in its application, extending to those situations where there may be present the common objective of entering into collective agreement, but where there is absent any willingness to discuss how that common objective might be reached. Reference to this aspect of the duty was made by Roach, J.A., in *Regina ex rel Hodges v. Dominion Glass Co. Ltd.*, [1964] 2 O.R. 239 at p. 247:

“There may be some subtle distinction between bargaining in good faith and making every reasonable effort to make a collective agreement but it is so tenuous and elusive as to lose any legal significance.

By s.12 of the *Labour Relations Act* the Legislature has stated comprehensively the duty imposed on management and labour alike with regard to collective bargaining, and by s.69 it has imposed a liability for the breach of that duty. The information simply charges a breach of that duty: it does not charge two offences. That duty contains two ingredients, that are so inseparable and so blended as to lose their separate identities, the one to bargain in good faith and the other to make every reasonable effort to make a collective agreement. Good faith is demonstrated by an honest and reasonable effort to make a collective agreement so that where the one exists so also does the other. This relationship between the two was thus expressed in *National Labor Relations Board v. George P. Pilling & Son Co.* (1941), 119 F. (2d) 32 at p.37:

Bargaining presupposes negotiations between parties carried on in good faith. The fair dealing which the service of good faith calls for must be exhibited by the parties in their approach and attitude to the negotiations as well as in their specific treatment of the particular subjects or items for negotiation. For such purpose, there must be common willingness among the parties to discuss freely and fully their respective claims and demands and, when these are opposed, to justify them on reason.

Having regard to the manifest purpose of s.12 of the Act there is no room for hair-line distinction between bargaining in good faith and making every reasonable effort to make a collective agreement. For all practical purposes the one may be said to be contained in the other.”

19. The requirement of rational discussion imposes upon the parties a duty to communicate with each other, recognizing that proper collective bargaining depends upon effective communication. Although a failure to communicate might not appear to be the same kind of wrong as an unwillingness to recognize the other party, it does, in fact, have a very serious effect on the collective bargaining process as a whole. The breakdown of established bargaining relationships, because of an unwillingness to engage in full discussion with the other party, is likely to lead to more frequent resort to economic sanctions, and to greater dissatisfaction with the collective bargaining process. The obligation to bargain in good faith recognizes the importance of collective bargaining as a structure within which a full dialogue can be conducted between a trade union and the employer.

20. A failure to comply with the duty to bargain in good faith, moreover, need no longer be regarded as a criminal wrong. The expansion of the Board’s remedial authority under s.79, as the result of the recent amendments to the Act, means that a breach of the statutory duty to bargain in good faith is now within the Board’s remedial jurisdiction. This jurisdiction is civil in nature, providing the Board with the authority to make either affirmative or negative directions. The Board is concerned with fashioning a remedy that will improve the bargaining relationship. The emphasis, therefore, is not upon measuring the wrongfulness of the conduct but upon restoring the bargaining relationship. The availability of an effective remedy means that the requirement of rational discussion assumes even greater importance, since there now exists at least a possibility that this kind of defect can be cured.

21. These general considerations must now be applied to the facts in this case. It is quite apparent that this is not a case where there has been a refusal to recognize the other party. The respondent had entered into a collective agreement with the applicant upon the completion of a previous round of negotiations. During this round of negotiations, moreover, the respondent did not indicate any unwillingness to recognize the applicant as bargaining agent. The offers made by the respondent demonstrated that it was quite willing to renew the collective agreement with the applicant. We, therefore, conclude that the duty to bargain in good faith has not been breached by reason of any failure to recognize the applicant as bargaining agent.

22. The duty to bargain in good faith, however, extends beyond a failure to recognize the other party. The discussions that took place between the parties must be examined in order to determine whether there was something less than the full and free discussion required by the statute. A careful scrutiny of the negotiations reveals an unwillingness on the part of the respondent to either provide a full justification for its own position on monetary items, or to discuss its objections to the applicant’s position in these matters. In our opinion, the respondent’s explanation of only the arithmetic guidelines fell short of a full justification for its position on monetary items. What was lacking was an explanation of why the respondent would not consider adopting a more liberal interpretation of the guidelines. It appeared, moreover, that at least in respect of the C.W.S. proposal the respondent had other reasons for resisting the proposals, and these reasons were not communicated to the applicant.

Looking at the other side of the coin, its treatment of the applicant's proposals, it is apparent that the respondent was equally unwilling to discuss the applicant's position on the monetary items in issue.

23. Does this unwillingness to engage in a full discussion amount to a failure to bargain in good faith? The respondent argued that its bargaining position was merely a responsible attempt to comply with the legal requirements of *The Anti-Inflation Act*. This argument raises the question of whether there might be some conflict between the duty to bargain in good faith and the obligation to comply with the anti-inflation guidelines. We do not perceive any such conflict. As we have already stated, the duty to bargain in good faith does not regulate the content of collective agreements, but only the manner in which they are negotiated. Our understanding of *The Anti-Inflation Act* is that it is a statute dealing with, among other things, the content of collective agreements, but not with the conduct of negotiations. The Anti-Inflation Board has stated:

"It is not the intention of the Board to replace the collective bargaining or other processes by which compensation is determined. It is expected that the parties will negotiate in good faith with a view to concluding agreements under the guidelines.

Where the parties reach an agreement which entails compensation provisions higher than the formula for allowable increases but which appears to conform to the overall provisions of the guidelines, the parties may submit their agreement to the Board. The Board will respond within thirty days.

The Board will monitor and analyze collective bargaining settlements as well as compensation changes affecting non-unionized organizations and employees.

On the basis of the information available to it, and the results of its own analysis, the Board will decide whether a situation appears to contravene the guidelines and to warrant action by the Board. In such cases, the Board will require the parties to justify their actions and will carefully examine the grounds for any exceptions under the guidelines.

Particularly in the early stage of the program, there may be circumstances where the negotiating parties find themselves in a position where an impasse has been reached over what is essentially an interpretation of the provisions of the anti-inflation guidelines. Such situations may arise with respect to the interpretation of exceptional circumstances as applied to a particular case.

Many uncertainties will be clarified by interim guidance statements to be issued shortly and by the regulations which will be promulgated later.

Should parties reach an impasse, however, having bargained in good faith and having exhausted normal conciliation procedures, the Board

will try, at the request of either or both parties, to clarify grounds for special consideration not specifically covered in interim guidance statements or regulations.

Any requests for special consideration will be closely scrutinized. The judgement of the Board will be influenced not only by the merits of the particular case, but also by the possible impact of the resulting settlement on the successful implementation of the anti-inflation program as a whole."

[Statement on Compensation – November 7, 1975, Canadian Temporary Economic Controls, p.2001.]

24. The full survival of the duty to bargain in good faith does not mean that the Anti-Inflation Act is not a factor to be taken into account during collective negotiations. Obviously the existence of this statute will influence the content of collective agreements. To refuse to discuss the impact of the anti-inflation guidelines at all would be a failure to bargain in good faith, since a factor of this significance should be the subject of full discussion during collective negotiations. A refusal to discuss the full implications of the guidelines by insisting on dealing with only one aspect of the restraints has the same effect, and is also a failure to bargain in good faith. It is in this latter respect that the respondent has failed to meet the duty to bargain in good faith. By adopting its own interpretation of the anti-inflation regulations and indicating its unwillingness to discuss any other interpretations, it has foreclosed the kind of full discussion required by law. A party cannot wrap itself in a cloak fashioned from its own interpretation of the guidelines in order to avoid the obligation to bargain in good faith.

25. The lack of full discussion on the monetary items is not remedied by what appeared to be a much fuller discussion of non-monetary matters. The fact is that the negotiations have broken down, and a major cause of the breakdown was the failure to discuss fully the monetary issues. Viewing the negotiations as a whole, we must conclude that the respondent has not met the requirement of rational discussion.

26. The submission of respondent's offer by the applicant for consideration by its membership does not, in our opinion, indicate that the respondent has complied fully with section 14. Although, indicating that the parties are dealing with each other, it offers no indication of the quality of discussion occurring between them. Even less relevant is the fact that after the guidelines were introduced, the respondent settled with other Steelworker locals elsewhere. The fact is that those negotiations were carried on separately from the negotiations in question. The conduct of the parties at those negotiations is simply not relevant to the case before us.

27. Given the respondent's failure to discuss fully the implications of the anti-inflation guidelines, there is now the question of what remedial relief is appropriate in the circumstances. This is not a case where there has been a failure to recognize the other party. Here the problem lies in the failure to engage in a full dialogue. It should be recognized that we are dealing with a reasonably mature bargaining relationship that has suffered a breakdown. In these circumstances, we do not consider it necessary to provide the specific directions to the respondent that were requested by the applicant. We are confident that a direc-

tion of a more general nature would better serve the purpose of repairing the bargaining relationship. At least one of the declarations requested by the applicant, moreover, appears to require an interpretation of the regulations under *The Anti-Inflation Act*, an exercise well beyond our jurisdiction.

28. We, therefore, direct the respondent to resume negotiations with the applicant, and to bargain in good faith and make every reasonable effort to make a collective agreement.

DECISION OF J. E. C. ROBINSON, Q.C.

I dissent from the decision of the majority.

Initially, I must say that I am in general agreement with the statement of facts outlined by the majority in paragraphs 1-13 inclusive.

The initial proposals made by the applicant to the respondent were in the form of a joint submission which dealt with the employer, primarily in Ontario, but over-lapping into the Province of Quebec. While there was some co-ordinated bargaining between the applicant and the respondent, the bargaining ultimately resolved into one of local character, with certain overtones from the co-ordinated approach present throughout.

Much of the bargaining between the applicant and the respondent, at least with respect to the location with which we are here concerned, took place after the announcement of the Federal Anti-Inflation programme. Subsequent thereto, of course, and during the currency of the negotiations at Nobel, the Government of Ontario opted to be covered by, and be subject to, the provisions of the *Anti-Inflation Act* and the regulations thereto.

It is within this context that this Board, a tribunal created by the Legislature of the Province of Ontario, must determine whether this respondent breached the provisions of Section 14 of The Labour Relations Act.

For, however one may agree or disagree with the Anti-Inflation Act, its virtues or vices, it is the law of the land, and it is trite to say that the existence of price and wage controls must, of necessity, influence the bargaining posture of both employers and trade unions.

With this background, one should also recall the jurisdiction of this Board which states in part:

Section 95(1). The Board has exclusive jurisdiction to exercise the powers conferred upon it by or under this Act and to determine all questions of fact or law in any matter before it,...

The respondent is alleged to have violated the provisions of Section 14 of The Labour Relations Act:

"The parties shall meet within fifteen days from the giving of the notice or within such further period as the parties agree upon and they shall bargain in good faith and make every reasonable effort to make a collective agreement." R.S.O. 1970, c. 232, s. 14.

It must be remembered that the bargaining relationship between the applicant and the respondent was a mature one, enveloping many bargaining units spanning the country. Indeed, the position of the respondent was consistent throughout all of its negotiations with its separate units; it intended to abide not only with the legislation and the guidelines, but with the spirit of the legislation and the guidelines.

Its position was that where offers were made by it prior to the guidelines, it would, in a spirit of good faith toward the union, make a joint proposal to the Anti-Inflation Board to have such offers approved. The evidence is clear that with the exception of the location here under review, the Steelworker locals settled with the respondent at the other locations.

The negotiations at this location were not perfunctory in nature. Approximately ten lengthy negotiating sessions took place resulting in agreement on many items.

Nor was the position of the respondent on wages ill conceived; its proposals, though within the guidelines, were based upon discussions with representatives of the Anti-Inflation Board, seminars on the guidelines and their impact upon the wages to be offered. Such information was shared with the applicant trade union at a meeting held in Montreal wherein many union representatives were in attendance, the formula for its wage offer was presented by the company, and the trade union was invited to indicate if there were errors in the calculation by the company.

In any event, I am not convinced that there would be a breach of Section 14 of The Labour Relations Act even if the company was misinformed in its calculation of its wage proposals and other matters under the guidelines, so long as such proposals were made honestly.

The majority in its decision have discussed with approval the recent decision of the Board in *De Vilbiss (Canada) Ltd.* (March 9, 1976), File No. 1124-75-U.

That panel of the Board in discussing the ramifications of Section 14 said:

"But this is not to say that they will or are obligated to have common objectives with respect to the contents of any collective agreement they might enter into. The legislation is based upon the premise that the parties are best able to fashion the law that is to govern the work place and that the terms of an agreement are most acceptable when the parties who live under them have played the primary roles in their enactment. In short, the legislation is based upon the notion of voluntarism and reflected in the many administrative and judicial pronouncements that neither trade union nor employer is, by virtue of the bargaining duty, obligated to agree to any particular provision or proposal. Therefore, while they must share the common objective to enter a collective agreement, the legislation envisages that they have differences with respect to just what the content of that agreement should be and those differences may force the parties to have recourse to economic sanctions."

What then is the main difference between the respective parties as to the content of the collective agreement? In my opinion the difference would seem to be that the Company is insisting that its wage "package" be within the guidelines while the trade union is suggesting that negotiations should be continued in order that the wage "package" might exceed the guidelines.

Without in any way reflecting upon the position of the union, how can the Company proposal be other than a statement of good faith? There is not one tittle of evidence to suggest that this is other than the response of a good corporate citizen.

Would it have been better to adopt a posture of deceit and give some other reason for delining to offer more? One can only respond in the negative. Does it make any more sense for the parties to feign negotiations concerning payments above the guidelines when the avowed intent of the Company is to remain within such guidelines? Need the Company accede to demands in excess of the guidelines when its other units have settled for figures within such guidelines? Should the Company sign a memorandum of agreement exceeding the guidelines, risk a roll-back by the Anti-Inflation Board, and face disgruntled employees on the one hand, and the penalties of the Anti-Inflation Board on the other?

On the totality of the negotiations between the respective parties, I would not have found that there was a breach of Section 14 of The Labour Relations Act. If I were to have found otherwise, I would have agreed with the remedy fashioned by my colleagues.

Before leaving this matter, however, I wish to quote from a decision of The Education Relations Commission, another tribunal created under the legislation of the Government of Ontario, in determining the counterpart section of this legislation in a case involving *The Federation of Provincial Schools Authority, Teachers and The Provincial Schools Authority*:

"Counsel for the teachers requested this Commission to provide direction for parties confronting the federal guidelines. It was his position, essentially, that notwithstanding the guidelines, the parties should continue to bargain in good faith, in the normal way, and that they should submit their agreement thereafter to the Anti-Inflation Board for approval. Counsel for the employer, however, urged that it wished to, and was entitled to, frame its offer with a view to compliance with the guidelines, and that in doing so it was not bargaining in bad faith. The employer submitted that, if it wished to do so, it was entitled to offer less than the guidelines. In point of fact, prior to the announcement of the guidelines, the employer had made an offer of a wage increase higher than that contemplated by the guidelines. In agreeing to let the offer stand, the employer apparently was willing to exceed the guidelines.

It is clear that the introduction of the guidelines has created an environment for collective bargaining which is basically uncharted. We use the term "basically uncharted" because the imposition of wage and price controls in both the United States and Britain obviously did have an impact on the collective bargaining process in those countries. But

the guidelines are new to this country, different in detail at least from analogous measures abroad, and have no precedent in the special context of Ontario educational negotiations.

Faced with national legislation to control wages and prices, we are of the opinion that a consideration of wage and price controls must obviously become a factor in the collective bargaining process.

In arriving at this conclusion, we are not deciding, nor is it within our province to decide, upon the constitutionality of the anti-inflation program. Further it is not our intention to pass judgment on the virtues or vices of the program or the decisions of the Anti-Inflation Board. Those issues are matters to be determined in other forums. It is our sole obligation in this context to assess whether the parties have bargained in good faith. In so doing, it appears to us to be inescapable that the existence of wage and price controls and determinations of the Anti-Inflation Board are matters which influence the collective bargaining posture of public employers, such as school boards, as well as private employers."

In conclusion, I would find that not only did the company bargain with sincerity, honesty and in good faith, but, in view of the guidelines, its efforts to negotiate a collective agreement were reasonable.

Accordingly, I would dismiss the application.

1773-75-U Local 251, International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW), (Complainant), v. **North American Plastics Company Limited**, (Respondent).

Collective Agreement – Union security provision – S36a – Whether the section may be relied upon in requesting inclusion of a security clause in an existing collective agreement – Whether the section applies to agreements existing at time section came into force.

BEFORE: Kevin M. Burkett, Vice-Chairman, and Board Members H.J.F. Ade and O. Hodges.

APPEARANCES: *Lennox A. MacLean, Ted Oana and Doug Lambert for the applicant; Milton Grant for the respondent.*

DECISION OF THE BOARD: April 30, 1976

1. This is an application brought under section 79 of the Act alleging a violation of section 36a of the Act. The complainant alleges that the respondent employer has failed to respond to its request that a union security provision, of the type contemplated by section

36a of the Act, be included in the collective agreement which presently subsists between them.

2. The fact of the existence of a subsisting collective agreement between the parties was admitted into evidence as was the correspondence which transpired between the parties during the relevant period. The complainant trade union wrote to the respondent company on August 15, 1975 directing the respondent's attention to the amendments to the Labour Relations Act and in particular to the provisions of section 36a which it stated became effective July 1, 1975. The respondent by letter dated September 4, 1975 informed the union that the section could "only become effective after the present collective agreement is rescinded by notification under the terms of the collective agreement." Counsel for the complainant by letter dated December 4, 1975 then informed the respondent that it was the position of the complainant union that the respondent was in violation of the Act by refusing to include a provision in the current collective agreement for the deduction of union dues as provided for in section 36a of the Act and proposed that the following provision be included in the collective agreement:

"At the written request of an employee in the bargaining unit, the employer, North American Plastics Co. Limited, shall deduct from the wages of the employee, the amount of the regular union dues payable by members of Local 251, U.A.W. and remit the amount to Local 251, in accordance with, and defined as, "regular union dues" in Section 36a of the Labour Relations Act."

A short form memorandum of settlement, signed by the complainant union, agreeing to the amendment of the current collective agreement by incorporation of the above clause was enclosed with the letter of December 4, 1975.

3. Section 36a of the Act reads:

"36a. - (1) Except in the construction industry, where a trade union that is the bargaining agent for employees in a bargaining unit so requests, there shall be included in the collective agreement between the trade union and the employer of the employees a provision that at the written request of an employee in the bargaining unit the employer shall deduct from the wages of the employee the amount of regular union dues payable by members of the trade union and remit the amount to the trade union.

(2) In subsection (1), "regular union dues" means,

- (a) in the case of an employee who is a member of the trade union, the dues uniformly and regularly paid by a member of the trade union in accordance with the constitution and by-laws of the trade union; and
- (b) in the case of an employee who is not a member of the trade union, the dues referred to in clause a, excluding any amount in respect of pension, superannuation, sickness insurance or any other benefit available only to members of the trade union."

4. The complainant argued that the clear and unambiguous meaning of the section requires that upon the request of a trade union that is the bargaining agent for employees in a bargaining unit *there shall be included in the collective agreement* between the employer and the trade union a voluntary union check-off provision. Counsel for the complainant argued that the section makes no reference to the period of bargaining, that it does not state “where a trade union is in bargaining for a collective agreement” and that the Board would be amending rather than expounding the section if it were to so hold. The complainant argued in addition that the type of voluntary union security contemplated in section 36a of the Act does not affect vested rights of either employees or employers. Counsel for the respondent on the other hand, argued that if the Board were to hold that the section applies to current collective agreements it would be lending a retrospective interpretation to the section thereby violating a fundamental tenet of statutory interpretation. If so interpreted the section might then interfere with the vested rights of an employer as embodied in a subsisting collective agreement which, he argued, it can only do if it is clear on the face of the section that the legislature intended it to be retrospective. In response to questioning from the Board, Counsel for the respondent listed the convenience of not collecting dues, the potential to trade-off the prescribed union security clause for other concessions at the bargaining table, (hardly a vested right in view of the clear statutory direction), and the ability to negotiate save-harmless and revocable provisions in conjunction with the prescribed union security clause as vested rights which would be adversely affected by a Board finding that the section applies to existing collective agreements. The respondent argued in the alternative that if the section does apply to existing collective agreements, the complainant should properly be before an arbitrator.

5. The alternative argument of the respondent flows from the Board’s usual practice of deferring to arbitration in certain circumstances. These circumstances usually involve an alleged unfair labour practice which is also an alleged violation of the collective agreement. The Board defers to an arbitrator in these circumstances when it is satisfied that the resolution of the alleged violation of the collective agreement will also resolve the unfair labour practice. (See *Imperial Tobacco* case [1974] OLRB Rep. July 418). Even if the Board were to find that Section 36a applies to existing collective agreements, such a finding would not give rise to circumstances which would dictate that this Board defer to a Board of Arbitration. An arbitrator whose jurisdiction is restricted to the interpretation application or administration of a collective agreement can exercise his jurisdiction in the absence of a clause in the collective agreement on the basis of clauses or provisions which are “deemed” by statute to be a part of the collective agreement. The word “deemed” does not appear in section 36a but rather there is a direction to the parties that upon the request of the bargaining agent a voluntary union check-off clause be included in the collective agreement. In the absence of such a clause it would be beyond the jurisdiction of an arbitrator to determine if in fact a request had been made pursuant to section 36a and/or if the clause proposed by the trade union and/or the employer met the requirements of section 36a. In the absence of the word “deemed” these determinations properly fall within the ambit of the Board’s jurisdiction and the Board would be refusing a proper exercise of its jurisdiction if it were to refuse to consider this matter.

6. The basic and overriding rule of construction of statutes is that found in *The Board of Trustees of the Acme Village School District No. 2296, of the Province of Alberta v. John Steele-Smith* [1933] S.C.R. 47. The question there, was whether a teacher’s contract of employment could be terminated only in accordance with the contractual terms or whether

it might also be terminated in accordance with the provisions of the Alberta School Act, 1931 S.A. 1931 c.32, s.157. The Act had been passed after the contract was entered into and the appellant argued that to give it retrospective effect would be to violate well known rules of construction. Lamont J. recognized these rules but went on to say:

“Rules of construction, however, are only useful in ascertaining the true meaning of a statute where the language is not clear and plain. If the intention of the legislature can be ascertained all rules of construction must yield to the legislative intention ...” at p. 51.

(See also, Maxwell on the Interpretation of Statutes, 12th edition Sweet and Maxwell Limited, 1969 at pages 28 and 29.).

7. Where the language of a statute is not clear the court or tribunal charged with administering the legislation attributes certain intentions to the legislature in the absence of a contrary intent; these attributions are called presumptions. It is presumed, in the absence of language to the contrary, that the legislature does not intend to interfere with vested rights. It is also presumed that enactments, in the absence of an explicit indication to the contrary, are designed to deal with future conduct and not to affect past conduct carried on under the then existing law. Considerable confusion has arisen with respect to the precise meaning and application of these two presumptions. A clear analysis of their meaning and inter-relationship is found in *The Construction of Statutes* E.A. Driedger, Butterworths, 1974, at pages 140 to 148:

“It is apparent that accrued rights can be affected by both prospective statutes and retrospective statutes, and this circumstance has led to confusion between the two presumptions. Thus, Sedgwick’s oft-quoted definition fuses the two presumptions into one, as follows:

‘A statute which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect of transactions already past, is deemed to be retrospective or retroactive.’

If that is to be taken as the definition of retrospectivity, then there would be no difference between the two presumptions – both would be simply presumptions against interference with vested rights; and there would for all practical purposes be no difference between retrospective and prospective statutes, because most statutes interfere with antecedent rights in some way. *The term “retrospective” can have meaning in relation to a statute only if it is used in its primary dictionary sense, namely, a statute that alters rights, not just for the future, but as of a past time. Sedgwick’s definition has led to the illogical assertion that if a statute is construed as affecting vested rights it is being given retrospective effect; and the consequential and equally illogical argument that if there is nothing in the statute to indicate that it was intended to operate as of a past time, then it must not be construed so as to affect vested rights.*” (emphasis added).

The author then refers to the case of *West v. Gwynne* ([1911] 2 ch. 1) as an example of the observation of the distinction between the two presumptions. This case is particularly appropriate to a consideration of the matter before this Board.

“The question was whether the statute applied to leases entered into before the statute was enacted. It was argued for the appellant that the application of the statute to existing leases would make the statute retrospective and that the presumption against retrospective operation should apply. Buckley L.J. said that to his mind the word ‘retrospective’ was inappropriate and the question was not whether the section was retrospective.”

‘Retrospective operation is one matter. Interference with existing rights is another. If an Act provides that as at a past date the law shall be taken to have been that which it was not, that Act I understand to be retrospective. That is not this case. The question here is whether a certain provision as to the content of leases is addressed to the case of all leases or only of some, namely, leases executed after the passing of the Act. The question is as to the ambit and scope of the Act, and not as to the date as from which the new law, as enacted by the Act, is to be taken to have been the law.’

The danger which arises when the two presumptions are not properly distinguished is that a statute might be interpreted as having no effect on so called “vested rights” on the sole ground that the language of the statutes does not indicate that it is to be given a retrospective interpretation.

“Confusion between the two, however leads to misdirected arguments, as in *West v. Gwynne*, for example, and the danger is that the absence of an express or implied indication in the statute that it is intended to operate as of a time prior to its enactment is regarded as an indication that the statute was not intended to affect rights existing at the time the statute was enacted. *Thus, failure to rebut the retrospective presumption becomes the sole reason for invoking the vested rights presumption; but the latter presumption ought not to be invoked unless the statute is inconclusive or ambiguous. The retrospective presumption is a prima facie presumption and applies unless it is rebutted. The vested rights presumption is not a prima facie one; it is but one factor that may be employed to ascertain intent in cases of doubt.*” (emphasis added).

8. Having regard to the proper meaning of the retrospective presumption the Board finds that Section 36a of the Labour Relations Act, in the absence of a stated or implicit indication of its retrospective application, is not a retrospective or retroactive section. It applies from the date of its enactment and can have no effect on any right, obligation or duty which existed prior to its enactment. A bargaining agent cannot request that the inclusion of the provision be made retroactive to a time prior to the enactment of the legislation.

9. The Board must now address itself to the effect of section 36a on existing or vested rights. The section does not place any condition upon compliance with the request of the trade union for the inclusion of the prescribed provision in the collective agreement. It does not make any reference to the of the existing collective agreement nor does it require

that a trade union be in bargaining for a collective agreement at the time it makes the request. The words clearly and unambiguously require that "there shall be included in the collective agreement" the prescribed provision upon the request of the bargaining agent and on the basis of its clear meaning the Board finds that section 36a of the Act, to whatever limited extent it affects vested rights, applies from the date of its enactment. This interpretation is not only clear on the face of the section but is in harmony with the Act as a whole. The legislature in its wisdom, has effectively removed from the sphere of collective bargaining union recognition (section 35), strike/lockout prohibition (section 36) and binding rights arbitration provisions (section 37). Similarly the legislature in its most recent enactments has decided that in the furtherance of "*harmonious relations* between employers and employees" the often divisive issue of even a minimal form of union security should be removed from the sphere of collective bargaining in order to better facilitate that process. The statute now directs in section 36a that upon the request of the bargaining agent there shall be included the prescribed provision. It is no longer a bargainable item to the extent that the unilateral request of the bargaining agent triggers the section and the inclusion of the required provision. The interpretation urged by the respondent is not only at variance with the clear meaning of the words of the section but it lends a meaning contrary to the purpose of the section in that it would *require* that the issue be dealt with at the bargaining table. This is not to say, however, that the section could not be triggered during the bargaining process but rather that the section cannot be interpreted as requiring that it be triggered only during the bargaining process.

10. The Board finds that the respondent has violated section 36a of the Act and directs the respondent to comply with section 36a of the Act. The Board will remain seized of this matter in the event difficulties arise in the compliance of its direction.

0056-76-R Teamsters, Chauffeurs, Warehousemen and Helpers Local 141 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America, (Applicant), v. **Spramotor Ltd.**, (Respondent).

Bargaining Unit – Whether the Board will exclude from a full time unit Seasonal employees.

BEFORE: D. H. Kates, Vice-Chairman, and Board Members D. B. Archer and J. E. C. Robinson, Q.C.

APPEARANCES: *I. J. Thomson for the applicant; D. J. McNamara and W. J. Barkey for the respondent.*

DECISION OF THE BOARD: May 5, 1976

2. The Board further finds that all employees of the respondent working at London, Ontario, save and except foremen, those above the rank of foreman, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed

during the school vacation period, constitute a unit of employees of the respondent appropriate for collective bargaining.

4. At the hearing the respondent requested the exclusion from the appropriate bargaining unit of employees classified as seasonal production employees. Apparently these employees are employed in the respondent's business on a seasonal basis between the months of January and March. There is no dispute that when employed these seasonal employees are engaged on a regular basis for more than 24 hours per week. In resolving that these employees form part of the appropriate bargaining unit, the Board repeats that the only distinction it makes in determining the appropriate exclusions from the unit is the question of whether they are employed on a full or part time basis. There are no third categories for what are sometimes referred to as casual, temporary or seasonal employees. (See; *Sydenham District Hospital* case [1967] OLRB Rep. May 135 at p.137; the *Centre Grey Hospital Division of Sno-Boy Coolers Limited* case [1967] OLRB Rep. September 546). The respondent's request that seasonal employees be excluded from the appropriate bargaining unit is therefore rejected.

5. A question also arose as to whether Mr. L. Gossman classified by the respondent as a mechanic shares a community of interest with employees in the bargaining unit for purposes of section 6(1) of the Act.

6. The Board is satisfied on the basis of all the evidence before it that more than fifty-five per cent of the employees of the respondent in the bargaining unit at the time the application was made, were members of the applicant on April 20, 1976, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

7. An interim certificate shall issue to the applicant under section 6(1)(a) of the Act.

8. Mr. A. A. Morrow, Labour Relations Officer, is authorized to inquire into and report back to the Board on the community of interest of Mr. Gossman with the employees in the bargaining unit.

0099-76-JD International Brotherhood of Electrical Workers Local Union 353, (Complainant), v. **Day Signs Limited** and International Brotherhood of Painters and Allied Trades, Local 1630, (Respondents).

Jurisdictional Dispute – Whether the complainant must have requested an assignment of the work before making a complaint to the Board – Whether demand made to construction association that work be done by members of complainant union a request for assignment within meaning of the Act.

BEFORE: R. A. Furness, Vice-Chairman, and Board Members J. D. Bell and P. J. O’Keeffe.

APPEARANCES: *L. C. Arnold appearing for the complainant; B. Chercover and B. Ross appearing for Painters Local 1630; Stanley W. Long appearing for Day Signs Limited; and J. P. Wilson appearing for the Electrical Contractors Association of Toronto.*

DECISION OF THE BOARD: May 7, 1976

1. The complainant has requested that the Board issue a direction under section 81 of The Labour Relations Act with respect to the assignment of certain work involved in the installation, including electrical hook-up, of all electrical fixtures, and electrical signs, including directional and informational signs within structures at the CN Tower project in Toronto.

2. The question of the jurisdiction of the Board to entertain this complaint was raised by the International Brotherhood of Painters and Allied Trades, Local 1630 (hereinafter referred to as “Local 1630”). After entertaining the representations of the parties, the Board ruled that section 81(1) sets forth the two circumstances under which the Board has jurisdiction to entertain a complaint regarding an assignment of work. The Board noted that where an employer has certain work performed by certain employees pursuant to a collective agreement it may not be said that such an employer was or is assigning work to persons in a particular trade union rather than to persons in another trade union.

3. In the *Urban Consolidated Construction Corporation Ltd.* case, (Board File 77375-74-JD, decision dated February 12, 1976) the Board held that in order for it to have jurisdiction in a complaint regarding the assignment of work a complaint must be made on or before the complaint is filed with the Board. The filing of the complaint with the Board does not in itself constitute a requirement to assign particular work to persons in a particular trade union or in a particular trade, craft or class rather than to persons in another trade union or in another trade, craft or class. A cause of action must accrue in its entirety on or before a proceeding is commenced under section 81, that is to say, in this instance, April 15, 1976.

4. In as much as the complainant appeared to base its complaint on its alleged requirement to assign particular work the complainant was directed at the hearing to adduce evidence that such a requirement was made to Day Signs Limited (hereinafter referred to as “Day”) on or before April 15, 1976. In making this ruling the Board noted that it was concerned with the assignment of work as between an employer and employees and not as between two or more employers.

5. Day has a contract with the Foundation Company of Canada Limited (hereinafter referred to as "Foundation") to manufacture, deliver and install advertising and display signs at the project. The work of installation is performed by Day's employees who are covered by a collective agreement between Day and Local 1630. The Complainant takes the position that the work referred to in paragraph one herein ought to be performed by its members. The complainant does not have a collective agreement with Day. However, the complainant does have a collective agreement with the Electrical Contractors Association of Toronto (hereinafter referred to as "ECAT") and Ainsworth Electric Company Limited (hereinafter referred to as "Ainsworth") is covered by this collective agreement. Article 3 of this collective agreement provides in part:

SECTION 3

EMPLOYERS

"300. This agreement is to be signed by representatives of the Electrical Contractors Association of Toronto on behalf of Electrical Contractors who are members of the Association.

301. This Agreement may be signed by individual contractors who are not members of the Electrical Contractors Association.

302. To qualify, a signatory shall be one whose principal business is Electrical Contracting, and the principals shall not do electrical work themselves. They shall maintain a permanent place of business with a business telephone and be open to the public during normal business hours."

6. On April 12, 1976 a meeting was held in the offices of the Toronto Construction Association (hereinafter referred to as "TCA"). Present at the meeting were representatives of the TCA, Foundation, the general contractor on the project; Ainsworth, the electrical sub-contractor on the project; ECAT, Day; the complainant and Local 1630. The meeting was convened by Mr. R. Bond, the president of the TCA, on the suggestion of Mr. J. P. Wilson, the labour relations representative of ECAT. It appears that the initial concept of the meeting was to have only the complainant and Local 1630 meet under the good offices of the Toronto Construction Association. However, the number of parties which attended the meeting became greater and this in turn caused varying degrees of surprise to those who were present.

7. At the meeting on April 12, 1976, it was made quite clear by Warren Chapman, the business manager of the complainant, that the complainant claimed that the work in dispute should be performed by members of the complainant. There was some discussion concerning how this could be theoretically achieved. There was some discussion following a proposal by Mr. Chapman of having Day sub-contract the work in dispute to a contractor which is covered by the collective agreement between ECAT and the complainant. In the alternative, Mr. Chapman suggested that the complainant might supply men to Day if ECAT would permit Day to sign the collective agreement between ECAT and the complainant. We find that at no time on or before April 15, 1976, did the complainant require an employer or an employer's organization to assign particular work to persons in a particu-

lar trade union or in a particular trade, craft or class rather than to persons in another trade union or in another trade, craft or class within the meaning of section 81(1) of The Labour Relations Act.

8. It is clear from the evidence that there is some considerable doubt whether Day would qualify as a potential signatory to the collective agreement between ECAT and the complainant. However, be that as it may, we interpret the evidence as not establishing that the complainant unequivocally desired the work in dispute from Day. The behaviour of the complainant is far more consistent with a desire to have the work in dispute not performed by Day but rather by a signatory to the collective agreement between ECAT and the complainant. We note in passing that the presence of representatives from Ainsworth and ECAT at the meeting and the presence of a representative from ECAT at the hearing appears to indicate that such a desire is not solely attributable to the complainant. In our view, in order for a trade union to satisfy the phrase "was or is requiring" in section 81(1), it must demonstrate an unequivocal interest in the work in dispute with respect to the employer or employer's organization which is directly involved in the dispute. It is not sufficient for a trade union merely to show that it does not wish a particular employer to perform the work in dispute.

9. We therefore find that the Board does not have jurisdiction to inquire into the complaint. This complaint is dismissed without prejudice to the right of the complainant to file a complaint under section 81(1) of The Labour Relations Act.

10. The Board was engaged for a very full day in resolving the threshold question of its jurisdiction. This question of jurisdiction involved not a question of interpretation of The Labour Relations Act but rather an issue of fact. In our experience there is a tendency for parties to proceedings under section 81(1) to raise questions of fact regarding the Board's jurisdiction. While there is no necessity for a party to communicate in writing its position regarding an assignment of work, such a manner of communication may well resolve many of the controversies regarding the preliminary facts in a complaint which impede an expeditious determination of proceedings under section 81(1).

1535-75-U, 1536-75-U Local 2345 International Brotherhood of Electrical Workers, AFL CIO CLC, (Complainant), v. **Onward Manufacturing Company Limited**, (Respondent).

Evidence – Whether the Board will consider a decision by another panel in a certification application that a petition was unacceptable as evidence of employer anti-union activity in a S79 complaint.

BEFORE: Kevin M. Burkett, Vice-Chairman, and Board Members J.D. Bell and P.J. O'Keeffe.

DECISION OF THE BOARD: May 13, 1976

1. The Board has received a letter from the complainant trade union in this matter dated April 1, 1976 requesting that the Board reconsider its earlier decision dated March 10, 1976. The complainant sets out three reasons in support of its request. These reasons as stated in the complainant's letter are as follows:

"(1) We believe the Board failed to consider all evidence when they concluded in items 18 and 19 of their decision that there was an absence of evidence indicating anti-union activity by the employer in the period from September 24, 1975 to December 17, 1975. During the hearing the Chairman had disallowed reference to a Certification hearing and that decision. That hearing was held November 24, 1975 and the decision dated December 2, 1975; File Reference 1218-75-R and involved the submission of a petition by some of the employees. Evidence was recorded of anti-union activity by the employer.

(2) For our second point we submit that the Board did not address itself to the complaint that Section 61 of the Act had been violated. The complaint had been that the Employer violated both Section 58(a) and Section 61. Evidence had been presented that in fact the employees had become afraid to participate in the Union because of the two terminations. We submit that this evidence should have been included in the decision and that the Board should have responded to that complaint.

(3) Our final point is one of concern as to the effects of this decision. We recognize that relatively few cases have been heard since the amendment in Section 79(4a). It is our belief that this decision will be used in future cases and we are concerned that it may be implied that an employer need only "bide his time" and he can terminate without it being considered an Unfair Labour Practice. We believe this decision could set a precedent which could have disastrous effects on future cases."

2. With reference to the first reason as set out in the complainant's letter of April 1, 1976, the Board states that it considered all of the evidence which was *properly* before it in concluding that the Act had not been violated and has reviewed that evidence in response to the complainant's request for reconsideration. The complainant argues that the Board should have considered evidence of anti-union activity by the respondent employer which had been recorded in a decision of *another panel* of the Board dated December 2, 1975. The complainant attempted to introduce that decision in this matter for the purpose of establishing anti-union activity by the employer. The Board, however, would not permit the December 2, 1975 decision to be used for this purpose. The December 2, 1975 decision of the Board arose out of an application for certification in which the Board was required to make a finding as to the voluntariness of a statement of desire in opposition to the applicant trade union. The matter before this panel of the Board is a complaint brought under Section 79 of the Act alleging anti-union activity wherein the employer bears the legal burden of proving on the balance of probability that it did not violate the Act. It would not be fair to take Board findings arising out of a petition hearing, having regard to the nature of that proceeding and the issues therein determined, and use those findings against the employer in a subsequent section 79 complaint.

3. The complainant was free to adduce evidence with respect to the circumstances surrounding the origination and circulation of the petition for the purpose of establishing a pattern of anti-union activity in support of its section 79 allegations. In the course of adducing that evidence the complainant could have used the December 2, 1975 decision to attack the credibility of any witness who under oath made prior statements inconsistent with the findings of the Board in its December 2 1975 decision. The complainant did not adduce such evidence and the Board in the absence of this evidence could not proceed and cannot now proceed on the basis of the December 2nd findings of another panel of the Board. (See re Regina v. OLRB ex parte Trenton Construction Workers Association 2 OR [1963] 376). The decision of the Board in this matter was based on the evidence properly before it.

4. The complainant also asks for reconsideration on the grounds that the Board did not address itself to the alleged violation of Section 61 of the Act. The Board found that the termination of the two grievors did not violate the Act. There was no other evidence of a probative nature before the Board that would support a violation of section 61 of the Act.

5. We do not see how this decision will have "disastrous effects on future cases." The decision, based on the evidence, takes account not only of the lengthy period of time from the employer's first knowledge of trade union activity to the termination of the grievors, but more importantly the intervening events which gave the employer ample opportunity to vent anti-union sentiment under the guise of work performance or attitude. An employer cannot simply "bide his time" and escape the consequences of unlawful activity. However, in the face of a credible explanation for the termination, and in the absence of probative evidence indicating a pattern of anti-union activity, the Board cannot infer that anti-union motive precipitated the termination.

6. Having regard to all of the foregoing the request for reconsideration is denied.

0035-76-U Graphic Arts International Union Local 12-L, (Complainant), v. Graphic Centre (Ontario) Inc., (Respondent).

Collective Agreement – Duty To Bargain In Good Faith – Whether a collective agreement must be a single formal document – Whether agreement must be signed – Whether a signed memorandum of settlement meets requirement of signatures – Whether signed offer and signed return letter meet requirement of signatures – S14 – Whether the parties must make all demands known early in bargaining process.

BEFORE: Kevin M. Burkett, Vice-Chairman and Board Members E. Boyer and J.E.C. Robinson, Q.C.

APPEARANCES: *Harold F. Caley and Mike Zajac for the applicant; Wilfred Walters for the respondent.*

DECISION OF THE BOARD: May 18, 1976

2. This is an application brought under section 79 of the Act alleging violations of sections 14, 36, 41, 42, 63 67 and 74 of the Labour Relations Act. The complainant and the respondent were parties to a collective agreement which terminated on December 31, 1975.

3. The president and owner of the respondent company, Mr. W. Walters, served notice on the complainant trade union of the Company's desire to re-negotiate the agreement by letter dated October 2, 1975. The union acknowledged receipt of the company's letter on October 8, 1975 indicating that it was prepared to submit a list of amendments or if the Company desired, await finalization of the Industry Master Contract. In a letter dated December 2, 1975 the company indicated its preference to conclude negotiations by December 31, 1975 and asked the union to meet with it at its earliest convenience. The parties met on December 16, 1975 and the union tabled a list of 12 proposals (Exhibit #4). The company, represented by Mr. Walters and Mr. Corcoran, a subordinate, responded by asking that the status-quo be maintained and that the current agreement be renewed with no changes. A further meeting was scheduled for December 29, 1975. Mr. Walters did not attend that meeting but was represented by Mr. Corcoran and a Mr. Yashar who informed the union that Mr. Walters had directed that there be no changes from the existing collective agreement. The union subsequently applied for conciliation services and a conciliation officer was appointed on January 12, 1976. A conciliation meeting was convened on January 22, 1976 and although there was an exchange of proposals the parties remained in separate rooms. The conciliation meeting did not resolve the dispute and accordingly the Minister by letter dated February 3, 1976, informed the parties that she had decided not to appoint a Board of Conciliation thereby setting in motion the statutory "count-down" period prior to the commencement of the "open" period.

4. The parties met again on February 18, 1976 at which time the company made further offers which were confirmed in a letter of the same date from Mr. Walters to Mr. Zajac, the vice-president of Local 12-L of the complainant union. This offer incorporated the hours, vacation and welfare as offered at the conciliation meeting of January 22, 1976 with a proposal on wages, retroactive pay, deferred profit-sharing, benefit check-off and term (18 months). The company made the offer valid until February 29, 1976 mid-night. The union rejected this proposal and notified the company of the rejection on February 24, 1976, whereupon Mr. Walters called the employees together, discussed the situation and made a new offer also valid until February 29, 1976 mid-night which was confirmed by letter of the same date. Mr. Walters removed the benefit check-off proposal, shortened the term to 15 months and made a corresponding reduction from the 18 month wage offer. The membership then voted to accept this latest offer. Mr. Zajac who was in Montreal on February 24, 1976 was notified of these developments by Mr. G. Munro, a member of the local union bargaining committee. Mr. Greg LeClair, another local committeeman, was to convey the results of the vote to the company. Mr. LeClair testified that on February 25, 1976 he notified Mr. R. Hickling, the plant manager, who had been present at all of the union management meetings from January 22 to February 24, 1976, of the union's acceptance of the company's February 25th offer. Mr. Hickling acknowledged that he had been advised testified that in his mind the negotiations were then concluded.

5. The union lodged a "grievance" dated March 3, 1976 in which it alleged that the company had hired one Barry MacDonald, a pressmen, on February 9, 1976 in violation of article 2 subsection 2 of the collective agreement, maintenance of membership. Mr. Zajac testified that the union had purposely waited until the completion of bargaining before filing

this grievance because of the desire of the members to avoid doing anything which might jeopardize retroactive pay. The company responded by letter dated March 5, 1976 objecting to the union's interference in the selection of its personnel and enclosing an invoice for financial losses incurred by the company on account of the poor workmanship of a "stripper" who had been hired from the union's reserve of workers. The union then countered with a letter to the company naming the union's nominee to the Board of Arbitration, signed by Harold F. Caley, the union's counsel. Mr. Walters replied to Mr. Caley's letter the following day stating that the company had been operating without a contract since December 31, 1975 and therefore did not have to answer to the union. Mr. Walters concluded his March 10, 1976 letter to Mr. Caley by stating:

"...We are awaiting an official answer from the G.A.I.U. regarding the vote taken by our employees on Wednesday February 25, 1975 regarding our new agreement."

Two days later Mr. Zajac forwarded to Mr. Walters unsigned copies of the renewal collective agreement under cover of the following letter:

"Enclosed are two copies of the renewal of your Collective Agreement, and eight signature pages.

It would be appreciated if you would sign and return all eight pages, for processing through our International Offices."

Mr. Waters replied by letter dated March 17, 1976 as follows:

"We are in receipt of the copies of the proposed contract and upon our first reading, they appear to be in order.

We feel that a confirmation of your dropping the grievance against us is in order before we can complete our contractual arrangements."

Mr. Zajac replied the same day stating that the union would not drop the grievance and again asking Mr. Walters to sign the contract.

6. The union held a membership meeting under the direction of Mr. Alan Wheatcroft, the executive vice-president of Local 12-L on Friday, March 19, 1976 at the Selby Hotel. The membership was apprised of the apparent impasse between the parties arising out of the MacDonald grievance and agreed that if Mr. MacDonald would rejoin the union and pay his back dues the matter would be settled. Mr. Wheatcroft and the three shop delegates were authorized to meet, and did meet with Mr. Walters, and explore this avenue of settlement. Mr. Wheatcroft met privately with Mr. MacDonald and testified that Mr. MacDonald agreed to join the union and to pay an assessment of \$288, (he is now a member of the trade union) and that upon being informed of this development Mr. Walters agreed that the collective agreement could then be signed. Mr. Wheatcroft admitted that the possibility of strike action was discussed at the March 19, 1976 membership meeting and acknowledged that it was his opinion that the parties were then in the "open period".

7. The union prepared a Memorandum of Understanding dated March 22, 1976 (Exhibit #17) incorporating the terms of settlement of the grievance as verbally agreed to on March 19, 1976. These were that the union would withdraw the grievance, Mr. MacDonald would join the union and pay the required \$288 and the company would cancel its invoice for poor workmanship dated March 5, 1976 and execute the new collective agreement. This document was signed by both the union and Mr. MacDonald. The company responded in a letter from Mr. Walters to Mr. Zajac dated April 1, 1976. The letter began as follows:

"The recent negotiations between the GAIU and Graphic Centre and the final outcome has left an ill feeling between us. The tactics used to force Barry MacDonald into the Union were undemocratic in fact they were dictatorial. We are not happy with our relationship and we feel that it will effect our association in the future.

As a direct result of our recent negotiations we feel that some drastic changes are in order and we have marked up our new contract accordingly. The changes are as follows:"

and concluded with sixteen company demands for further amendments to the collective agreement including amendments to the maintenance of membership, jurisdiction, hours, and overtime, grievance procedure and early retirement provisions.

8. There had been posted on March 24, 1976 at the respondent's place of business the following notice.

"Notice To All Litho Personnel

Subsequent to our recent negotiations, all retroactive wages that were finalized will be paid beginning April 9th, 1976 payroll and the following four consecutive weeks as per our agreement.

Personnel not involved in the negotiations will receive an additional 3% retroactive pay at the same period."

The evidence establishes that the employees of the respondent received an amount reflecting the negotiated wage increase in their April 9, 1976 cheques and in addition the appropriate portion of their retroactive pay entitlement. The evidence also establishes that holiday pay for Good Friday (April 16) reflected the terms of the negotiated agreement. Subsequent to this time the employees have been paid on the basis of the rates shown in the old collective agreement; the negotiated increases having been revoked by the employer.

9. Mr. H. Caley, appearing on behalf of the applicant union, argued that a collective agreement pursuant to the statutory definition need not be found in a single document, but rather can be found in the written correspondence of the parties which evidences their agreement of all items. It was his contention that the Board should find that a collective agreement exists in the face of evidence which establishes that the bargaining process had been completed. He referred to the company offer of February 24, 1976 as signed by Mr. Walters (Exhibit #8), the union's acceptance and the verbal conveyance of this acceptance

to the company the following day which was subsequently followed by the written confirmation of Mr. Zajac in his covering letter of March 12, 1976 (Exhibit #13) as sufficient evidence to permit the Board to find the existence of a collective agreement. The applicant considers the March 3, 1976 grievance to be outside the scope of the bargaining process and argues that in any event the parties had verbally agreed to a settlement of that matter on March 19, 1976 as detailed in the memorandum of March 22, 1976 (Exhibit #17) as signed by both the union and the grievor. The applicant referred to a number of Board decisions in support of its proposition that the evidence adduced in the instant case is sufficient to cause the Board to find that there exists a collective agreement. The applicant argued in the alternative that failing the existence of a collective agreement the actions of the employer, in particular the April 1, 1976 proposals, (Exhibit #18) constitute a failure to bargain in good faith and make every reasonable effort to make a collective agreement as required by section 14 of the Act.

10. Mr. Walters, the owner and president of the respondent, argues that there is no collective agreement and that his conduct therefore does not violate the Act.

11. The Act defines a collective agreement as follows:

“collective agreement” means an agreement in writing between an employer or an employers organization, on the one hand, and a trade union that, or a council of trade unions that, represents employees of the employer or employees of members of the employers’ organization, on the other hand, containing provisions respecting terms or conditions of employment or the rights, privileges or duties of the employer, the employers’ organization, the trade union of the employees.”

The collective agreement is the cornerstone of our labour relations system. It evidences the existence of bargaining rights and other than during a stipulated period serves as a bar to either the termination or transfer of these rights. It evidences a bargain struck between the parties as to terms and conditions of employment for a term specific and requires that any dispute as to its interpretation, application or administration be resolved by binding arbitration. Its existence or lack thereof can be determinative of the legality or illegality of certain activities engaged in by an employer, a trade union or by employees. The Board in lending an interpretation to section 1(1)(e) has been influenced by both the realities of the collective bargaining process and by the practical need for consistent and easily understood criteria. The parties to collective bargaining do not normally execute a formal document until some time after the bargaining process has been completed. The process is one wherein the agreement of the parties is reduced to a memorandum of settlement subject to ratification by the respective principals which is then followed by the drafting and execution of the formal document. It would not be sound industrial relations policy to require as a condition of entering into a collective agreement the execution of the formal document thereby precipitating an often prolonged extension of the open period. The parties, however, must know, with a high degree of certainty and predictability, precisely when they have entered into a collective agreement so as they may properly assume their respective duties and responsibilities and conduct themselves in a manner consistent with the existence of a subsisting collective agreement. It should be added that certainty in this regard minimizes the amount of “litigation” which might otherwise come before the Board.

12. The Board has long held that a collective agreement need not be a single formally executed document but may by proper reference incorporate any number of other documents. (See *Rossi Bakery Limited* case [1964] OLRB Rep. July 266, *Crestile Limited* case [1967] OLRB Rep. Apr. 41). The Board has consistently held, however, that implicit in the statutory definition of "an agreement in writing" is the requirement for *signatures* which evidence the agreement of the parties and the conclusion of the bargaining process. The Board has stated that:

"The nature of collective bargaining usually requires tentative agreement on various terms and provisions which will be included in the final collective agreement. Such agreed to terms do not constitute a collective agreement within the meaning of the Act until they are engrossed in a document signed by the parties to the agreement or are incorporated by reference into such signed agreement. During the course of collective bargaining the terms which receive tentative approval and which are to be incorporated into a collective agreement are usually reduced to writing. Often times such individual terms are signed or initialled by the bargaining parties for the purpose of identification. While the parties may eventually re-engross all the agreed to terms into a formal collective agreement, it is not uncommon for such terms to be embodied into a collective agreement by signing a memorandum of settlement which incorporates by reference all the terms that have been previously agreed to. However, until such time as the parties complete their negotiations by resolving all outstanding issues and bring their bargaining to an end, it cannot be said that a collective agreement has been consummated. Provisions which have received tentative approval are often deleted or changed in the light of some subsequent provision which is negotiated. Until the parties have finally agreed on all the provisions to be contained in the collective agreement and have documented their agreement and have agreed on the date of commencement and the term of operation or duration of the agreement and have evidenced the existence of their agreement by affixing their signatures to the document or documents which embodies all the provisions agreed to, it cannot be said that the parties have executed an agreement in writing which can be characterized as a collective agreement within the meaning of section 1(1)(c) of the Act. *It may be that at common law the parties have an enforceable contract if the doctrine of part performance or estoppel applies, however, such common law contract is not necessarily a "collective agreement" within the meaning of the Act.*"

(See *Marsland Engineering Limited* case [1970] OLRB Rep. Apr. 133 and also *Peace River Mining and Smelting Ltd.* case [1970] OLRB Rep. July 505). The Board in accord with the statutory definition requires signed evidence of the agreement of the parties and in the absence of such evidence cannot find that the bargaining process has ended and that a collective agreement exists. This is not to say, however, that the signatures must appear on the formal document but rather that there must be a signed document which sets out the agreement of the parties and which, if stipulated, has been ratified thereby completing the bargaining process. Thus the Board stated in the *Service Employees Union Local 210* case [1974] OLRB Rep. Oct. 739.

“...The requirement to execute a formal document was thereby rendered superfluous in light of the duly executed documents filed before as indicating that there were no outstanding matters inhibiting the execution of the collective agreement.”

13. In a number of cases the Board has been faced with situations where the parties have signed a memorandum of settlement subsequent to which confusion has arisen as to whether ratification has occurred. In certain of these situations the Board has responded to the extrinsic evidence and drawn the inference that ratification has occurred without there being signed evidence of this fact. (See *Versa Services Limited* case [1972] OLRB Rep. Apr. 306, *Service Employees Union Local 210* case supra, *Field-Price Limited* case [1973] OLRB Rep. Oct. 543). In other similar situations however the Board has stated that the parties must signify their ratification of the memorandum in writing (see *Marsland Engineering Limited* case supra, *Civil Service Association of Ontario* case [1971] OLRB Rep. Sept. 596) in order for there to be a collective agreement within the meaning of the Act. Although each case must be considered within its own circumstances a signed memorandum of settlement coupled with *compelling* evidence of ratification must be considered by the Board as evidence of a collective agreement within the meaning of the Act. Whereas a Memorandum of Understanding subject to ratification is not a collective agreement (see *John Inglis Co. Ltd.* case [1974] 1 Can. LRBR 481 (BC), evidence which clearly establishes that ratification has occurred elevates the memorandum to the status of a collective agreement within the meaning of the Act. Ratification satisfies the condition precedent thereby giving rise to what is then an unconditional agreement in writing (i.e. signed by the parties) on all outstanding matters. Although signed evidence of ratification is perhaps the most satisfactory evidence in this regard, the Board cannot ignore other evidence which supports the singular inference that ratification has occurred. It should be added that if the Board were to require signed evidence of ratification in all cases it would be denying the parties use of the equitable doctrine of estoppel in those situations where there is evidence of ratification, other than signed notification which has been relied upon by one or the other of the parties. (See *Garden City Laundry Limited* case [1970] OLRB Rep. May 240).

14. In the instant case the parties did not sign a memorandum of settlement or any other document which evidences any agreement in principal subject to ratification. There is no signed evidence before the Board which would allow the Board to conclude that at a particular point in time the bargaining process had been completed and the parties were *ad idem* with respect to all of the terms and conditions of employment. The Board has before it a signed offer by the company dated February 24, 1976 (Exhibit #8) and a signed covering letter from the union March 12, 1976 which was enclosed with unsigned draft copies of the proposed collective agreement. (Exhibit 13). The Board cannot conclude that these two documents, when taken in the context of this case, constitute a collective agreement. There is evidence before the Board which does not permit the Board to conclude that the parties were *ad idem* as of March 12, 1976, the date upon which the union first signified although somewhat obliquely, its acceptance of the company offer of February 24, 1976, and the first time as of which the required union signatures were affixed to any documents. The union filed the MacDonald grievance on March 3, 1976 at a time when, in the absence of a memorandum of settlement or other jointly signed attestation of agreement, there did not exist a collective agreement and as a result raised an issue of obvious contention between the parties which was further compounded by Mr. Walters' March 5, 1976 invoicing of the union in the amount of \$860. In the face of this evidence the Board cannot conclude that the signa-

tures which appear on the company offer of February 24, 1976 and the union covering letter of March 12, 1976 evidence the existence of a collective agreement.

15. Counsel for the union referred to a number of Board decisions in support of his proposition that the signatures which appear on the two aforementioned documents, when taken in conjunction with the other evidence, support a finding of a collective agreement. (See re *Field Price Limited* case supra, *Kitchener Packers Co. Ltd.* case [1964] OLRB Rep. May. 75, *Service Employees' Union Local 210*, supra, *Versa Services Limited* case, supra, *Garden City Laundry Limited* case, supra and *Alcan Canada Foils* arbitration decision dated March 25, 1976, as yet unreported). The Board has reviewed all of these cases and without exception the respective parties entered into a jointly signed memorandum of understanding subject to ratification. In accord with the thinking of this Board as enunciated at paragraph 13 herein, the adjudicators in each of the cited cases considered the signed memorandum of settlement in conjunction with other satisfactory evidence of ratification to be sufficient to support the finding of a collective agreement. The instant case is distinguishable, however, by virtue of the fact that the parties to the instant application did not sign a memorandum of settlement or any other document which might be construed as "an agreement in writing" as that phrase has been interpreted by the Board. If the February 24, 1976 offer from the company (Exhibit #8) had been a signed memorandum of settlement extrinsic evidence of ratification might well have been sufficient to cause the Board to conclude that a collective agreement existed. In the absence of a "written agreement" (i.e. signed by the parties) signifying a conclusion to the bargaining process albeit subject to ratification, and in the face of evidence which establishes that the parties had not resolved all outstanding issues between them, the Board cannot find that a collective agreement exists.

16. The evidence of Mr. Wheatcroft, the executive vice-president of Local 12-L is indicative of the confusion which might arise in the absence of a consistent requirement for an agreement signed by both parties covering all outstanding issues. Although the union takes the position that a collective agreement exists Mr. Wheatcroft testified that at the union meeting of March 19, 1976 prior to his efforts to resolve the MacDonald Grievance, he thought that the parties were in the open period and that consequently strike action had been discussed at that meeting. The critical nature of the collective agreement makes it imperative that the parties be aware of precisely when they have entered into a collective agreement for the reasons set out in paragraph 11 of this decision. Although the Board has exercised some latitude in accepting extrinsic evidence of ratification it has consistently required, in accord with the statutory definition, that there be an agreement signed by both parties settling all substantive issues between them. In the overwhelming majority of cases the parties conform with this requirement and are aware that upon ratification of the terms and conditions contained in the memorandum they have entered into a collective agreement within the meaning of the Act. The parties to this dispute did not enter into such a "written agreement" and accordingly for the reasons cited the Board cannot find that a collective agreement exists.

17. Having found that a collective agreement within the meaning of the Act was not concluded by the parties the Board must now address itself to the conduct of the respondent which the applicant alleges constitutes a violation of section 14 of the Act. Section 14 of the Act states:

“The parties shall meet within fifteen days from the giving of the notice or within such further period as the parties agree upon and they shall bargain in good faith and make every reasonable effort to make a collective agreement.”

18. The Board has recently reviewed the nature of the duty required by section 14 of the Act in the *DeVilbiss (Canada) Ltd.* case (March 9, 1976, Board File No. 1124-75-U, as yet unreported) wherein the Board stated at paragraph 14, after considering the recognition aspect of the duty:

“But we believe the duty to meet and make every reasonable effort to make a collective agreement has an even more important function in a modern society that for the most part accepts that the trade unions have legitimate and important roles to play. That is to say that the duty assumes that when two parties are obligated to meet each other periodically and rationally discuss their mutual problems in a way that satisfies the phrase “make every reasonable effort”, they are likely to arrive at a better understanding of each other’s concerns thereby enhancing the potential for a resolution of their differences without recourse to economic sanctions – the impact of which is never confined to the immediate parties of an industrial dispute. At the very least rational discussion is likely to minimize the number of problems the parties are unable to resolve without the use of economic weapons thereby focusing the parties’ attention in the eleventh hour on the “true” differences between them.”

and concluded at paragraph 15 by stating that:

“Hence it is our belief that the duty described in section 14 has at least two principle functions. The duty reinforces the obligation of an employer to recognize the bargaining agent and, beyond this somewhat primitive though important purpose, it can be said that the duty is intended to foster rational, informed discussion thereby minimizing the potential for “unnecessary” industrial conflict.”

19. The requirement for rational discussion and full consideration of the issues between the parties is of particular importance in assessing the conduct of the respondent employer in the instant case. The evidence clearly establishes that the respondent took an initial position that it wished to renew the existing collective agreement without change. In response to the proposals of the union the company subsequently made its written offer on February 18, 1976 (Exhibit #8) wherein proposals #1 and #5, benefits payment and deferred profit sharing, are company proposals for amendments to the existing collective agreement. The union rejected the offer and following further discussion on February 24, 1976 the company withdrew its proposals and altered its response to the union proposals. The written offer of February 24, 1976 was voted upon and accepted by the union. The company was verbally notified of this acceptance and although this evidence was not sufficient to cause the Board to find that there existed at this point a collective agreement within the meaning of the Act, it is of probative value in assessing the subsequent conduct of the employer. The applicant union filed the MacDonald grievance on March 3, 1976 which raised an issue of contention between the parties and gave rise to the issuing of the

\$860 invoice and the company's refusal "to complete our contractual arrangements." The evidence establishes, however, that on March 19, 1976 the MacDonald grievance was resolved to the satisfaction of all parties including Mr. MacDonald and that Mr. Walters verbally indicated to Mr. Wheatcroft that he would be prepared to sign the collective agreement. This agreement was detailed in a memorandum dated March 22, 1976 (Exhibit #17) signed by both the union and Mr. MacDonald which the company refused to sign. Instead the company responded with its letter of April 1, 1976 containing 16 fresh demands.

20. The requirements for open and rational discussion of all the issues in dispute stems from the fact that collective bargaining is in essence an exercise in *decision making*. The parties make hard decisions as to the content and timing of their offers and counter offers as they attempt to conclude an agreement. Frequently the most difficult decision facing the parties and often a decision with far-reaching public ramifications, is the resort to economic sanctions. Decisions which determine terms and conditions of employment and which may precipitate strike or lock-out obviously require, as a matter of public policy, open and full discussions. Conduct by one of the parties to the process which inhibits or undermines the decision making capability of the other is conduct which is contrary to the requirement to bargaining in good faith and make every effort to reach a collective agreement. The failure of the employer to supply the requested wage data in the *DeVilbiss* case supra undermined the decision making capability of the union in that situation and the Board commented that:

"It is patently silly to have a trade union 'in the dark' with respect to the fairness of the employer's offer because it has insufficient information to appreciate fully the offer's significance to those in the bargaining unit."

Lack of full discussion obviously impedes the decision making capability to the detriment of the collective bargaining process and the relationship of the parties. (See *Canadian Industries Limited* case (May 7, 1976) Board File No. 1725-75-U as yet unreported). In the instant case the Board finds that the letter of the company dated April 1, 1976 containing the sixteen fresh demands is a violation of section 14 of the Act.

21. The decision making capability of the parties depends upon not only a full and open discussion of the items which are in dispute but also upon an awareness that the scope of the dispute is limited to those items which have been put into dispute in the early stages of the bargaining process. Decision making does not take place in a vacuum. The parties set the parameters with their early exchange of proposals thereby establishing the framework within which they negotiate. A party which holds back on an item or number of items and then attempts to introduce these matters into the negotiations as the process nears completion, effectually destroys the decision making framework. A party cannot rationally or properly consider its bargaining position in the absence of absolute certainty that the full extent of the dispute has been revealed. The tabling of additional demands after a dispute has been defined must, in the absence of compelling evidence which would justify such a course, be construed as a violation of the duty to bargain in good faith.

22. In the instant case the union was not altogether forthright in holding back the MacDonald grievance until it thought the bargaining had concluded. Nevertheless, the action of the employer which gave rise to that grievance occurred during the bargaining process thereby justifying a response by the union within the context of the bargaining process.

The evidence establishes that the matter was verbally settled to the satisfaction of all parties and that subsequent to this verbal settlement the company tabled its revised list of demands. The tabling of the grievance did not justify the employer's response especially in light of the fact that the response occurred after a verbal settlement had been achieved. The employer's conduct is in violation of section 14 of the Act in so far as that section requires that the parties act in such a way as to foster rather than undermine the decision-making capability of the parties.

23. The Board discussed the effect of the recent amendments to section 79 of the Act on the Board's ability to deal with conduct which is found to be in violation of section 14 of the Act in both the *DeVilbiss* case supra and the *Canadian Industries Limited* case supra and stated in the latter case at paragraph 20:

"A failure to comply with the duty to bargain in good faith, moreover, need no longer be regarded as a criminal wrong. The expansion of the Board's remedial authority under s. 79, as the result of the recent amendments to the Act, means that a breach of the statutory duty to bargain in good faith is now within the Board's remedial jurisdiction. This jurisdiction is civil in nature, providing the Board with the authority to make either affirmative or negative directions. The Board is concerned with fashioning a remedy that will improve the bargaining relationship. The emphasis, therefore, is not upon measuring the bargaining relationship. The availability of an effective remedy means that the requirement of rational discussion assumes even greater importance, since there now exists at least a possibility that this kind of defect can be cured."

24. A reading of this decision as it relates to the duty to bargain in good faith should re-set the proper bargaining parameters and thereby assist the parties to close whatever small gap legitimately exists between them. It is however often difficult to close a small gap where the scope for trade-off and compromise is severely restricted. This is especially true where the preceding events have given rise to emotional involvement. The Board, therefore, in fashioning a remedy designed to restore the relationship between the parties to this dispute directs that the parties make a joint request of the Director of Conciliation and Mediation Services for the appointment of a mediator and that they meet with the mediator at his earliest convenience and that in his presence bargain in good faith and make every reasonable effort to conclude a collective agreement.

1617-75-R Retail Clerks Union, Local 206, (Applicant), v. **Leons Furniture Limited**, (Respondent).

Bargaining Unit – Whether the Board will include full and part time employees in a single unit – Whether the Board will grant an all employee unit comprised of salesmen, warehousemen, office workers and cleaners.

BEFORE: D. H. Kates, Vice-Chairman, and Board Members F. W. Murray and H. Simon.

APPEARANCES: *J. A. Ryder and H. Jurchuk for the applicant; R. C. Filion, C. J. Leon and C. R. Myers for the respondent.*

DECISION OF THE BOARD: May 18, 1976

2. This is an application for certification for “all employees of the respondent” at its retail sales operations in Kitchener, Ontario.

4. The dispute in this application pertains to the description and composition of the appropriate bargaining unit. In this regard the respondent’s lists filed in reply to the application indicate that 21 employees were engaged in the applicant’s proposed unit on the date the application was filed. Of these employees, seven are full time salesmen, one full-time and three part-time office workers, one full-time and one part-time cleaner and four full-time warehousemen (including drivers) and four part-time. The applicant submits that an all employee unit encompassing all classifications of employees including part-time ought to be included in one appropriate bargaining unit. To do otherwise, by adopting as appropriate the respondent’s proposed units, it is argued, would be to undermine the viability of according the applicant bargaining rights having regard to the resultant fragmentation and size of those units. The respondent in reply simply requests the Board to apply its past criteria in determining appropriateness as cited in *The Usarco Limited* case [1967] OLRB Rep. September 526, inclusive of our policy with respect to part-time employees and find five bargaining units appropriate.

5. At the outset the Board finds that the applicant has not demonstrated by addressing itself to the particular facts set out in the Labour Relations Officer’s Report why we ought to depart from our practice of excluding employees who are regularly employed for not more than twenty-four hours a week from a full-time bargaining unit. We agree that the Board ought not to appear to exercise “tunnel vision” with respect to determining questions of appropriateness generally and the exclusion of part-time employees particularly. Nevertheless neither the evidence nor counsel’s argument thereto addressed itself to the fundamental rationale underlying the Board’s policy. That is to say, we have learned through experience in such applications that part-time employees do not share a community of interest with full-time employees in many aspects of the collective bargaining scenario. More precisely part-time employees are more pragmatically concerned with immediate as opposed to long term benefits with respect to improving their terms and conditions of employment. In applying this proposition to more practical issues the part-time employee usually prefers to sacrifice long term pension, medical and other welfare benefits for a more substantial increase in wages or a longer vacation period. The nature of the seniority provisions contained in a collective agreement with respect to promotions, transfer and lay-offs does not always assume the same degree of significance to the part-time employee as it would the

full-time employee. In other words, the Board has discerned a natural, inevitable schism in measuring the community of interests between the two categories of employees that invite separation into peculiar bargaining units. We have not been satisfied in the circumstances described herein that the applicant has shown us why we ought to depart from these past policy assumptions.

6. In resolving the issue with respect to “the” appropriate bargaining unit or bargaining units, the Board agrees with counsel for the respondent that we ought to adhere to the criteria extracted from *The Usarco* case (supra) with respect to making a determination under section 6(1) of the Act. The respondent is engaged throughout Ontario in the retail furniture business. It maintains an outlet for this purpose in Kitchener, Ontario. Seven salesmen are retained on a commission basis to service customers. They are appropriately dressed for this purpose and must demonstrate some expertise in salesmanship in order to be financially successful. Salesmen maintain a rotating schedule of approximately 44 hours, four days a week. Their duties are confined to selling. They are prohibited from moving furniture and the clerical function attributed to consummating a sale is restricted to preparing the bill of sale. They are confined for security reasons from entering the respondent’s office area. Each salesman averages approximately \$17,000 per annum in commissions and bonuses. They would report directly to the general manager or in his absence the service manager who acts also as the assistant general manager.

7. Approximately 67% of the respondent’s business is on a pick up basis; the balance of 33% is on a delivery basis. Warehousemen and truck drivers are employed for the purposes of making the necessary pick up and deliveries. The warehousemen are employed primarily for loading and unloading furniture to and from the trucks. They are involved in assembling floor displays and taking furniture into and out of display areas. Of peripheral importance they are required to perform housekeeping functions in the warehouse area, to clean the outside windows and to maintain the exterior grounds of the building. Their job mainly involves physical labour and for this purpose they are employed on a five day forty hour schedule with the appropriate coffee and lunch breaks. They dress in company uniforms designed for the job functions they perform. Both warehousemen and truck drivers report to the warehouse manager.

8. There are two cleaners (one full-time and one part-time) employed by the company. Their main function is to maintain and clean the showroom area of the respondent’s operations including the small office area. In this regard, the general showroom area inclusive of office space approximates 40,000 square feet and the warehouse area comprises 10,000 square feet. The cleaners are employed on an hourly wage schedule and share like benefits with respect to lunch and coffee breaks etc. as the warehousemen and the drivers. They are answerable to the general manager.

9. The office staff is composed of one full-time and three part-time employees. They perform sundry office, clerical and typing functions that are inherent in running a retail operation. They are employed on a weekly basis with the appropriate lunch and coffee breaks and are paid by salary. They report to the office manager. Because they also deal with details pertaining to the consummation of sales, the receiving of cash, the maintenance of inventory schedules and bookkeeping functions relating to accounts receivable and payable and the operation of the computer they maintain a closer liaison with the respondent’s head office in Toronto.

10. It is clear from the evidence contained in the Labour Relations Officer's Report there is absolutely no functional interchange of employees amongst the several categories of employees described herein. Once a sale is finalized the salesman escorts the customer to the office area with respect to arranging details for delivery and financing, if appropriate. It is clear that the salesman is responsible for writing up the bill of sale and securing the customer's signature before turning it over to the office personnel. Once at the office the bill of sale is checked for accuracy with respect to pricing and to availability with respect to inventory control and location. The tax and delivery charges etc. are thereupon calculated and the bill of sale is processed. If the transaction is "a pick-up" sale the money or cheque is received; if the sale is to be financed or is on a cash on delivery basis then a deposit is taken. When the sale is to be financed the customer is handed an application form to be filled out. In such instances "the sale is finalized subject to the approval of the finance contract". The full-time office girl will contact the finance company the respondent ordinarily deals with in order to determine whether the customer's application has been approved. In the event the application is turned down the general manager may attempt to arrange financing through another company and the office girl would be required to make the necessary telephone communication to determine whether approval is to be forthcoming. It was emphasized in the Labour Relations Officer's Report that the salesman once he presents the customer to the office has no further input into the transaction notwithstanding the subsequent financing, delivery or inventory problems that may arise. Save for following up the consummated transaction to make certain the customer is content the salesman is no longer in the picture.

11. The Board is satisfied that there exists a natural functional coherence and interdependence between the sales staff and the office staff employed by the respondent who by virtue of their rigidly delineated job duties are fully integrated with the principal objective of making and completing a sale. The process of making the sale is complemented by the functions of the office staff in arranging for the financing, delivery and availability of the goods. The salesman is precluded from entering (even in the physical sense) the domain of the office worker's responsibilities in completing the sale. Yet, without the performance of the detailed clerical and administrative work of the office employee the salesman could not collect his commission. We are therefore of the view that the office employees ought to be included with the sales staff in the appropriate bargaining unit. (See: *International Harvester Co. of Canada Ltd.* case [1968] OLRB Rep. June 262).

12. The Board further finds that save for the similarity of the terms and conditions of employment of the office and showroom cleaners they share no functional relationship with the warehousemen and truck drivers. Rather their duties of maintaining and cleaning the display areas is an essential ingredient supportive and supplemental to the salesman's function of selling the respondent's merchandise. It was interesting to note that the cleaners are not responsible for engaging in housekeeping duties outside of the showroom area. The maintenance functions in the warehouse and outside the building are performed by the warehousemen. And in the performance of their duties the cleaners do not report to the warehouse manager but to the general manager. The Board therefore finds that the cleaners are appropriate for inclusion in an office and sales unit. (See: *The American Standards Limited* case [1967] OLRB Rep. July 355).

13. The Board further finds that warehousemen and truck drivers, because of the similarity of their terms and conditions of employment, their functional detachment from the retail sales process of the respondent's business and the general nature of their job duties,

ought to comprise together one appropriate bargaining unit for collective bargaining purposes. (See; *The Domtar Chemicals* case [1958] OLRB Rep. October 719). In reaching this conclusion the Board notes particularly that the delivery aspect of the respondent's undertaking constitutes only $\frac{1}{3}$ of the respondent's sales. The balance is arranged presumably by the customer. And in the event the customer prefers to take advantage of the respondent's delivery service, he is charged a premium of 4% of the purchase price. In other words, the delivery functions performed by the respondent's employees are almost peripheral to the consummation of a sale. Yet, in providing these services both the warehousemen and the truck driver necessarily complement each other with respect to the loading and unloading aspects of moving furniture to and from the display room and on and off the delivery trucks. The Board therefore finds a natural functional coherence and interdependence that compels us to find that a separate unit of warehousemen and truck drivers constitute an appropriate unit for collective bargaining. (See; *The Norfish Limited* case [1963] OLRB Rep. November 423; *William Neilson Ltd.* case [1969] OLRB Rep. April 76).

14. The Board simply rejects as a viable proposition the respondent's argument that we ought to dismiss this application for certification because no bargaining unit proposed by the applicant could be considered appropriate. The basis for making this submission lies in the alleged misleading notice that may have been extended employees in the proposed "all employee unit". In other words, employees who may have anticipated that the proposed unit would ultimately be determined to be the appropriate bargaining unit may very well have been differently motivated with respect to union representation had they known in advance that the proposed bargaining unit would ultimately be disputed and perhaps altered by the Board. In certifying the applicant for an appropriate bargaining unit that departs from the employees' initial expectation is in counsel's view a breach of the notice requirements of the rules of natural justice.

15. The Board repeats its statement made at the hearing in this regard. We cannot discern any prejudice to the affected employees by virtue of the notice procedures adopted in the particular circumstances of this case. Section 6(1) of the Act confers upon the Board the obligation to determine "the" appropriate bargaining unit having regard to the evidence and the representations of the parties relevant thereto. (See, *The Board of Education for the City of Toronto* case [1970] OLRB Rep. July 430). It is patently within our jurisdiction once that unit is determined to ascertain the membership count in accordance with the provisions of section 7 of the Act. (See, *The McDonalds Restaurants Limited* case [1973] OLRB Rep. May 287). In our experience in dealing with issues arising out of disputes with respect to the appropriate bargaining unit, it is very rare that the ultimate unit determined to be appropriate mirrors the unit initially proposed by an applicant trade union. In this application the employees affected were extended notice through the Board's "Notice of Application For Certification" (Form 5) indicating particularly the applicant's proposal for "an all employee unit". No employee so affected has chosen to intervene in the proceedings with a view to making representations on the issues pertaining to the application. It has not been demonstrated to our satisfaction that any person affected by the instant application has been thwarted with respect to obtaining full access to our processes. (See, *The Patida Services Ltd.* case [1972] OLRB Rep. August 793). Had the applicant trade union proposed a unit that failed to encompass categories of employees ultimately included in the bargaining unit determined by the Board to be appropriate then obviously different considerations would apply. (See; *The Sunnybrook Food Market Ltd.* case [1972] OLRB Rep. February 165). In the last analysis, however, surely it is incumbent upon the employees upon being duly notified

of an application for certification to intervene in the process to safeguard their rights generally and with respect to issues arising out of the appropriate bargaining unit, particularly. (See: *The Cunningham Drug Stores Ltd.* case 72 CLLC ¶14,167 at p.14,694). The Board therefore rejects counsel's submissions and is satisfied that the employees affected herein have been extended proper notice of the instant application.

16. The Board therefore finds that all office, clerical and sales employees of the respondent at Kitchener, inclusive of cleaners save and except office and service managers persons above the rank of office and service manager and persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period, constitute a unit of employees of the respondent appropriate for collective bargaining (hereinafter referred to as bargaining unit #1).

17. The Board is satisfied on the basis of all the evidence before it that more than fifty-five per cent of the employees of the respondent in bargaining unit #1 at the time the application was made, were members of the applicant on February 9, 1976, the terminal date fixed for this application and the date which the Board determines under section 92(2)-(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

18. A certificate will issue to the applicant with respect to bargaining unit #1.

19. The Board further finds that all office, clerical and sales employees of the respondent at Kitchener, inclusive of cleaners, regularly employed for not more than twenty-four hours per week and students employed during the school vacation period, save and except office and service managers, persons above the rank of office and service manager, constitute a unit of employees of the respondent appropriate for collective bargaining (hereinafter referred to as bargaining unit #2).

20. The Board is satisfied on the basis of all the evidence before it that more than fifty-five per cent of the employees of the respondent in bargaining unit #2 at the time the application was made, were members of the applicant on February 9, 1976, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

21. A certificate will issue to the applicant with respect to bargaining unit #2.

22. The Board further finds that all warehousemen and truck drivers of the respondent at Kitchener, save and except warehouse managers persons above the rank of warehouse manager and persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period, constitute a unit of employees of the respondent appropriate for collective bargaining (hereinafter referred to as bargaining unit #3).

23. For purposes of clarity the Board notes that employees described as "warehousemen" also perform housekeeping and maintenance functions in the respondent's warehouse area and on the grounds surrounding the warehouse building.

24. The Board is satisfied on the basis of all the evidence before it that not less than forty-five per cent of the employees of the respondent in bargaining unit #3, at the time the application was made, were members of the applicant on February 9, 1976, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

25. A representation vote will be taken of the employees of the respondent in bargaining unit #3. All employees of the respondent in bargaining unit #3 on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is taken will be eligible to vote.

26. Voters will be asked to indicate whether or not they wish to be represented by the applicant in their employment relations with the respondent.

27. The matter is referred to the Registrar.

28. The Board further finds that all warehousemen and truck drivers of the respondent at Kitchener regularly employed for not more than twenty-four hours per week and students employed during the school vacation period, save and except warehouse managers persons above the rank of warehouse manager, constitute a unit of employees of the respondent appropriate for collective bargaining (hereinafter referred to as bargaining unit #4).

29. The Board is satisfied on the basis of all the evidence before it that more than fifty-five per cent of the employees of the respondent in bargaining unit #4 at the time the application was made, were members of the applicant on February 9th, 1976, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 8(1) of the said Act.

30. A certificate will issue to the applicant with respect to bargaining unit #4.

1833-75-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant), v. **The Diebold Company of Canada Limited**, (Respondent), v. Group of Employees, (Objectors).

Petition – Membership Evidence – Whether the Board may consider the effect of a Petition – Effect of a Petition on the membership evidence – S7(2) – Whether the Act gives the Board the authority to order a vote because of a petition.

BEFORE: Kevin M. Burkett, Vice-Chairman and Board Members H.J.F. Ade and P.J. O’Keeffe.

APPEARANCES: *R. Russell and George Stevens for the applicant; Keith Billings and D. J. Craig for the respondent; Wayne A. Durkee and Harry R. Smith for the objectors.*

DECISION OF KEVIN M. BURKETT AND H.J.F. ADE: May 17, 1976

2. This is an application for certification.

4. Having regard to the agreement of the parties the Board finds that all employees of the respondent company in Barrie, Ontario, save and except foremen, those above the rank of foreman, office and sales staff, constitute a unit of employees of the respondent appropriate for collective bargaining.

5. The Board is satisfied on the basis of all the evidence before it that more than fifty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant on March 23, 1976, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

6. There was filed with the Board in this matter a number of statements of desire which, if found to be clearly in opposition to the union, and which, if found to be voluntary, would cause the Board to order that a representation vote be taken. Mr. R. Russell, representing the applicant union, raised a preliminary objection to the Board conducting its normal inquiry into the origination, preparation and circulation of these documents. It was his contention that the Board did not have the legislative authority to consider a petition in opposition to the union having regard to the explicit definition of "member" and "membership" found in section 1(1)(j) of the Act and to the Board practice of certifying outright under the provisions of section 7(2) when it is satisfied that a trade union represents more than fifty-five per cent of the employees in the appropriate bargaining unit. He argued further that Board Rule 48(1) is contrary to the provisions of the Act and that accordingly the rule standing by itself did not give the Board the required authority to consider statements of desire in opposition to the trade union. He reasoned that prior to the inclusion of section 1(1)(j) in the Act in 1970 the Board had greater latitude to determine the acceptability of union membership evidence but that subsequent to this time the Board should have bound itself to the statutory definition and should, if satisfied in this regard and satisfied with respect to the fifty-five per cent criteria, certify the trade union without regard to any statement of desire in opposition.

7. The following sections of the act are relevant to a consideration of the question raised by the applicant:

"1(1)(j) 'member', when used with reference to a trade union, includes a person who,

- (i) has applied for membership in the trade union, and
- (ii) has paid to the trade union on his own behalf an amount of at least \$1 in respect to initiation fees or monthly dues of the trade union,

and 'membership' has a corresponding meaning;

7(1) Upon an application for certification, the Board shall ascertain the number of employees in the bargaining unit at the time the application was made and the number of employees in the unit who were members of the trade union at such time as is determined under clause j of subsection 2 of section 92.

92(2) Without limiting the generality of subsection 1, the Board has power,

(j) to determine the form in which and the time as of which evidence of membership in a trade union or of objection by employees to certification of a trade union or of signification by employees that they no longer wish to be represented by a trade union shall be presented to the Board on an application for certification or for a declaration terminating bargaining rights, and to refuse to accept any evidence of membership or objection or signification that is not presented in the form and as of the time so determined;

7(2) If the Board is satisfied that not less than 45 per cent and not more than 55 per cent of the employees in the bargaining unit are members of the trade union, the Board shall, *and if the Board is satisfied that more than 55 per cent of such employees are members of the trade union, the Board may direct that a representation vote be taken.*"

8. Section 7(1) requires that the Board have regard to not only the number of employees in the bargaining unit who are members of the union but to the time as of which they are members. The Board has the power under Section 92(2)(j) to determine the time as of which evidence of membership in a trade union or "of objection by employees to certification" shall be presented to the Board and has exercised this power to require that such evidence be filed not later than the terminal date for the application. (Rule 48(1) of the Board's Rules of Procedure). On a reading of these sections it is clear that the Board in attempting to ascertain the true intentions of a majority of the employees in the bargaining unit as of the terminal date must have regard to not only evidence of membership but also to evidence of objection which is filed before the *terminal* date. All of this evidence is relevant in making the above determination which is the central issue in the certification proceeding.

9. All of the relevant evidence, both for and against certification, is by necessity hearsay evidence. It is not possible, nor would it be desirable, to require oral evidence from each and every employee in each and every certification application. The legislation and the resultant procedures have been designed to protect the secrecy of the employees' desires and to promote administrative efficiency, and as a result it is sometimes difficult for the Board to determine the true intentions of a sufficient number of bargaining unit employees and as a result it is always open to the Board to direct that a confirmatory secret ballot representation vote be held. Section 7(2) of the Act requires that the Board direct that such a vote be held when the Board is satisfied that not less than 45% and not more than 55% of the employees in the bargaining unit are union members and gives the Board a discretionary power to order a vote when it is satisfied that more than 55% of the employees in the bargaining unit are members of the applicant union.

10. The Board will direct that a vote be taken even when it is satisfied that more than 55% of the employees in the bargaining unit are members when there is also placed before it evidence of objection by employees to the certification of the trade union which *firstly* meets the requirements of form and timeliness as set out in Rule 48(1)(a) and (b), which *secondly* calls into question the true intentions of a sufficient number of employees i.e. when there is sufficient overlap between evidence of membership and evidence of objection that the Board is unable to ascertain the true intentions of a sufficient number of the bargaining unit employees on the basis of the membership evidence alone, and which *thirdly* is proved to be a voluntary signification by evidence called in accord with Rule 48(5). When sufficient evidence of objection which is proved to be voluntary is before the Board, there is a doubt raised in the mind of the Board as to the true intentions of the majority of the employees as of the terminal date which causes the Board to exercise its discretion under Section 7(2) and direct that a representation vote be taken.

11. The directing of a representation vote in these circumstances does not result from a Board finding with respect to the membership evidence, but rather it is the result of an exercise of the Board's discretion under Section 7(2) caused by the Board's uncertainty with respect to the true intentions of the bargaining unit employees as of the terminal date. The Board "may" direct that a representation vote be taken when it is satisfied that more than 55% of the employees in the bargaining unit are members of the trade union in accord with the statutory definition of membership found in Section 1(1)(j) of the Act. The Board so directs when in addition to bona fide membership evidence it is also confronted with meaningful evidence of objection. The Board, in these circumstances, cannot satisfy itself as to the true intentions of the majority of the employees on the basis of either the membership evidence or the evidence of objection and therefore exercises its discretion and directs that a representation vote be taken.

12. The preamble to the statements of desire which were filed in the matter before us read as follows:

"This is not a vote for or against the union. This is expressing my desire for to have an open vote (re secret ballot). I hereby elect the bearer to present this document at the hearing March 29/76."

13. The Board's discretion under Section 7(2) to order a representation vote when it is satisfied that more than fifty-five per cent of the employees in the bargaining unit are members of the trade union is exercised when it is presented with meaningful evidence of objection by employees to the certification of the trade union. Having regard to the preamble and to the evidence of Mr. Smith, the only inference which can be drawn from the statements placed in evidence in the instant case as to the intention of those who signed is that they wished a secret ballot. These are not statements of objection by employees to certification of a trade union. Although these statements may reflect opposition to Board practice and perhaps even to the manner in which the Board exercises its discretion under Section 7(2) they do not clearly express opposition or objection to the certification of the applicant trade union and the Board cannot infer that they do. (See *Ever-Bright Limited* case 57 CLLC 18,053, *Green Giant of Canada Limited* case [1973] OLRB Rep. June 376, *New Ontario Dynamics Ltd.* case [1975] OLRB Rep. Nov. 845 at page 849). These documents do not therefore cause the Board to direct that a representation vote be taken.

14. A certificate will issue to the applicant.

DECISION OF BOARD MEMBER P.J. O'KEEFFE:

1. I join with the majority in granting a certificate to the applicant.
 2. I dissent from the reasoning relating to the preliminary objection and will deal with this matter in writing in a decision to follow.
-

1360-75-M Arcan Eastern Limited, (Employer), v. International Association of Bridge, Structural and Ornamental Ironworkers, Local Union 721, (Trade Union).

Accreditation – S116(4) – Effect of trade union gaining bargaining rights for an Employer in a specific Board Area where an accreditation exists for an employers Association and a Collective Agreement has been signed with the Association for a larger area.

BEFORE: R. A. Furness, Vice-Chairman, and Board Members H. J. F. Ade and E. Boyer.

APPEARANCES: *D. L. Brisbin and B. Archer appearing for the employer; Ian Springate, Allan MacIsaac, and Stan Arsenault appearing for the trade union.*

DECISION OF THE BOARD: May 3, 1976

1. The Minister of Labour has referred to the Board pursuant to section 96 of The Labour Relations Act whether he has the authority to appoint a conciliation officer.
3. In a request which is dated September 30, 1975, the trade union requested the Minister of Labour to appoint a conciliation officer.
4. Prior to the hearing of this reference the employer gave notice of its intention to request the Board to reconsider a decision of the Board dated November 22, 1974, wherein the Board issued a certificate to the trade union with respect to a bargaining unit of ironworkers in the Board's geographic area #8. However, during the hearing of this reference the employer withdrew its request for reconsideration.
5. The relevant facts which pertain to this reference are not in dispute. On June 18, 1974, the Board accredited The Ontario Erectors' Association as the bargaining agent for all employers of ironworkers for whom the trade union has bargaining rights in "the District of Muskoka and all counties of Dufferin, Durham, Haliburton, Northumberland, Ontario, Peel, Peterborough, Prince Edward, Simcoe, Victoria, and York and in the County of Hastings the Townships of Marmora, Rawdon, Sidney, and Thurlow. Also in the county of Halton – the premises of the Ford Motor Company in the industrial, commercial and institutional sector and heavy engineering sector of the construction industry". The certificate of accreditation recites the list of employers for whom the Ontario Erectors Association became the bargaining agent under the certificate. In addition, the certificate of accreditation recites that the Ontario Erectors Association becomes the bargaining agent for such other

employers for whose employees the trade union may after June 15, 1972 obtain bargaining rights through certification or voluntary recognition in the geographic area and sector set out in the unit of employers described therein. The name of the employer does not appear in either the certificate of accreditation or in the decision of the Board in connection therewith.

6. On June 17, 1974, a collective agreement was in effect between the Ontario Erectors' Association and the trade union. Since that date the Ontario Erectors' Association has entered into a new collective agreement.

7. On November 22, 1974, the Board certified the trade union under the construction industry provisions of The Labour Relations Act for a bargaining unit of ironworkers employed by the employer in the Board's geographic area #8. Following the issuance of the certificate, the trade union sought to meet with the employer for the purpose of having it acknowledge that it was bound by the collective agreement with the Ontario Erectors Association. The employer adopted the position that it was not bound by this collective agreement.

8. On May 27, 1975, the trade union and other locals of the International Association of Bridge, Structural and Ornamental Ironworkers entered into a collective agreement with the Ontario Erectors' Association. This collective agreement expires on April 30, 1977. Article 1.4 and 1.4a of the collective agreement provides:

"1.4 This Agreement shall apply to all the employees of an Employer within the Province of Ontario, save and except persons above the Rank of General Foreman (it is understood that General Foremen are not required to be Union members except as noted in Article 16), who are engaged in, but not necessarily limited to the following, which shall include all field maintenance work undertaken by the Employer.

(a) The field fabrication, erection, installation, welding, demolition, revision, repair and dismantling of all structural and miscellaneous steel, ornamental metals, and plastic, fiberglass, or substituted materials, space frames, unistrut, and equivalent trade name materials, laminated wood structures and prefabricated metal buildings. The Employer agrees not to assign work to others that is normally performed by members of the Union in the Employer's yards."

9. On May 27, 1975, the trade union informed the employer that it had breached this collective agreement with respect to the installation of certain storage racks. The employer stated that it was not bound by this collective agreement. Subsequently, the trade union notified the employer that it intended to proceed to arbitration and named its nominee to a board of arbitration. The employer refused to appoint a nominee to the board of arbitration.

10. On June 2, 1975, the trade union applied to the Minister of Labour for the appointment of a nominee to the board of arbitration on behalf of the employer. It appears that the employer indicated to the Minister of Labour that he did not have the authority to appoint a nominee. It also appears that upon discovering that the Minister of Labour intended to appoint a nominee, the employer named its nominee without prejudice to its position that it was not covered by the collective agreement with the Ontario Erectors Association.

tion. The board of arbitration reserved its proceedings pending the outcome of this reference.

11. The evidence before the Board established that the employer's business includes the field installation of shelving and racking within buildings which have previously been erected. The employer's products may be lagged or bolted to the floors of buildings. In its discussions with the trade union, the employer, while adopting the position that it was not bound by the collective agreement with the Ontario Erectors Association, is prepared to negotiate a new collective agreement with the trade union. The evidence further establishes that seven other companies perform, in varying degrees, work similar to the installation work of the employer. There has not been any dispute that these other companies are covered by the collective agreement with the Ontario Erectors Association.

12. The trade union argued that the accreditation order dated June 17, 1974, clearly covered the industrial, commercial and institutional sector of the construction industry and that the employer comes within this sector. The trade union characterized the employer's business of field installation of shelving and racking as the installation of miscellaneous steel and adopted the position that this work is covered in article 1.4(a) of the collective agreement. It was further argued that by virtue of section 116(4) of The Labour Relations Act the employer was bound by the collective agreement with the Ontario Erectors Association. The trade union contended that the Minister of Labour lacks the authority to appoint a conciliation officer.

13. The employer agreed that the trade union had been certified with respect to the Board's geographic area #8. However, the employer emphasized that the accreditation order covered a wider geographic area and that the collective agreement covered an even broader area. The employer pointed out that on March 7, 1969, the Board issued a certificate to the trade union for a bargaining unit of ironworkers in the Board's geographic area #11 and that it was not included in the accreditation order dated June 17, 1974.

14. The employer argued that because the accreditation order dated June 17, 1974, did not cover it, there was no justification for finding that it is subsequently covered. The employer further argued that the Board should not find that the collective agreement with the Ontario Erectors Association which is effective throughout Ontario applies to it merely because of one or two certificates which the Board has issued to the trade union with respect to the Board's geographic area #8 and #11. It was the position of the employer that the trade union has bargaining rights and that it is prepared to negotiate a collective agreement with the trade union. To this end the employer submitted that the Minister of Labour has the authority to appoint a conciliation officer.

15. In brief the trade union is seeking to use its own words, "to obtain the employer's signature on an existing collective agreement and not on a new collective agreement". It became apparent during the hearing of this reference that the primary purpose of the request for the appointment of a conciliation officer was not to discover whether or not an officer would be appointed but rather to have the Board express its views on the extent, if any, of the application of the collective agreement with the Ontario Erectors Association to the arbitration proceeding between the parties.

16. This reference arises from a request for the appointment of a conciliation officer following the issuance of a certificate by the Board to the trade union on November 22, 1974, with respect to geographic area #8. The trade union apparently failed to draw to the attention of the panel of the Board which considered the application for accreditation in the Board's File #2139-72-R the existence of its bargaining rights with respect to the employer in geographic area #11. For this omission the trade union must bear the main responsibility. The trade union obtained bargaining rights with respect to geographic area #8 on November 22, 1974, and the application for accreditation which affected *inter alia*, geographic area #8 was filed on June 15, 1972, and was granted on June 17, 1974. Section 116(4) of The Labour Relations Act provides:

"Where, after the date of the making of an application for accreditation the trade union or council of trade unions obtains bargaining rights for the employees of an employer through certification or voluntary recognition, that employer is bound by any collective agreement in existence at the time of the certification or voluntary recognition between the trade union or council of trade unions and the applicant employers' organization or subsequently entered into by the said parties."

17. The collective agreement with the Ontario Erectors Association as an accredited employers' organization became effective on May 1, 1975, and remains in effect until April 30, 1977. The trade union obtained certain bargaining rights with respect to geographic area #8 subsequent to June 17, 1974, on November 22, 1974. There can be no doubt that the trade union has obtained bargaining rights with respect to geographic area #8 with respect to ironworkers by virtue of a certificate of the Board dated November 22, 1974. Such bargaining rights have not been restricted to any particular sector of the construction industry for as the Board stated in the *Eilpro Holdings Inc.* case [1973] OLRB Rep. March, 169, it is not prepared to determine bargaining units with reference to any sector or sectors. The employer's business of the field installation of shelving and racking which may be lagged or bolted to the floors of buildings is the "field erection and installation of all miscellaneous steel" as referred to in article 1.4(a) of the collective agreement with the Ontario Steel Erectors. In addition, the company's field installation work clearly falls within the industrial, commercial and institutional sector of the construction industry. See the *Arcan Eastern Limited* case [1969] OLRB Rep. April, 141.

18. By virtue of the operation of section 116(4) of The Labour Relations Act, the employer is bound by the collective agreement with the Ontario Erectors Association. To what extent is the employer bound by this collective agreement? In our view, section 116(4) is to be interpreted in accordance with the extent of the trade union's actual bargaining rights with respect to the employer. These bargaining rights exist within the Board's geographic area #8. They do not extend beyond geographic area #8 by virtue of the certificate which is dated November 22, 1974, and there is no suggestion that the trade union's bargaining rights with respect to the employer were extended by any form of voluntary recognition. In our opinion, section 116(4) contemplates a situation where the unit of employers that is appropriate for collective bargaining is co-extensive with the bargaining unit with respect to which a trade union or council of trade unions subsequently acquires bargaining rights. The interpretation and operation of section 116(4) to any given situation requires that recognition be given to the actual or potential bargaining rights of other trade unions beyond the scope of the bargaining rights which a particular trade union may acquire after the date of the making of an application for accreditation.

19. When the foregoing considerations are applied to the circumstances of this reference, the Board finds that the employer is bound by all the necessary terms of the collective agreements with the Ontario Erectors Association with respect to the Board's geographic area #8 which were in effect on and after November 22, 1974. With respect to the Board's geographic area #11, this reference was not based upon this earlier certificate of the Board and since such a certificate was in existence prior to the date of the making of the application for accreditation proceeding which has been referred to throughout this decision for the Board to consider the effect of this earlier certificate in effect would be to inquire into the accreditation order itself. This panel of the Board is not prepared to embark upon such an enquiry or analysis.

20. The Board for the foregoing reasons agrees with the trade union that the Minister of Labour does not have the authority to appoint a conciliation officer. The Board therefore advises the Minister of Labour that in its opinion the Minister does not have the authority to appoint a conciliation officer.

1679-75-U Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 880, (affiliated with the International Brotherhood of Teamsters etc.), (Complainant), v. **Coulter & Sons (Windsor) Ltd.**, (Respondent).

Discharge For Union Activity – Effect of S79(4a) where evidence of both parties is unsatisfactory.

BEFORE: Frank V. Boscarior, Vice-Chairman, and Board Members H. J. F. Ade and E. Boyer.

APPEARANCES: *I. J. Thomson and G. Foley for the complainant; A. R. MacMillan for the respondent.*

DECISION OF THE BOARD: May 5, 1976

1. This is a complaint filed under the provisions of Section 79 of The Labour Relations Act wherein the complainant trade union alleged that on or about February 5, 1976, the aggrieved person, James Ridout, has been dealt with by the respondent contrary to the provisions of Section 58 of the said Act.

2. The undisputed facts leading up to the filing of this complaint, we find, are as follows: On November 20, 1975, the complainant trade union filed an application for certification (Board File No. 1313-75-R). Mr. MacMillan, Counsel on behalf of the respondent, acting on the instructions of Charles Coulter, (the President, who together with his brother William, are the owners of this family business), did not appear at the hearing to oppose the application held in Toronto on December 15, 1975. Pursuant to the decision of the Board in that matter dated December 17, 1975, the complainant trade union was certified to represent a bargaining unit consisting of certain employees of the respondent subject to certain exclusions including that of foreman. By letter dated January 12, 1976, the complainant

trade union formally advised the respondent that Mike Ridout, the younger brother of the aggrieved person, had been elected Steward to represent the employees in the bargaining unit. Nevertheless, on the morning of January 28, 1976, and without any formal notice from the union, James Ridout purporting to act in his brother's capacity as Steward, in the company of Gerry Foley, the local union representative, attended at the offices of Mr. MacMillan where they met with him for the purpose of commencing negotiations with the company.

3. The evidence further establishes that the aggrieved person, James Ridout, commenced employment with the respondent on September 13, 1974, and up to the time of his discharge on February 5, 1976, he had worked in the respondent's retail furniture business in the capacities of both truck-driver and "touch-up" serviceman. Although on occasion James Ridout described himself as "foreman", we are satisfied, having regard to all of the evidence as tendered in this regard, that his duties and responsibilities at all relevant times were more akin to those of a "lead hand", and that as such, he did not exercise managerial functions within the meaning of Section 1(3)(b) of the Act.

4. Aside from the aforementioned events, the Board during the course of these protracted proceedings was faced with, what in our experience amounted to an unprecedented conflict in the testimony of the witnesses called by each of the parties on virtually every major question of fact coming before us for determination. Having now had the opportunity to carefully sift through such contradictory evidence, the following picture emerges: James Ridout up to the time of his discharge was the most senior and experienced employee in the bargaining unit and was looked upon both by the company and the employees as the *de facto* leader of the men. In contrast to his younger brother Michael, (whose behaviour was more docile but who nevertheless was given some degree of authority in the respondent's warehouse), James had a reputation for vocally standing up for his "rights" and expressing his views especially during the numerous confrontations he had with Craig Coulter, the respondent's Assistant Manager and the son of Charles Coulter. Despite James' acknowledged ability to perform his work tasks, it would appear he was not the most ideal employee during his period of employment, and we have no hesitation in finding that the respondent, on various occasions prior to the times relevant to this complaint, may very well have been justified in discharging him. Be that as it may, James was kept on, and according to Charles Coulter, it was his hope that James would some day replace his son in the execution of certain floor duties. In recognition of James' abilities, he was paid at a higher rate than the remainder of the employees, and it is also noteworthy that his employer permitted him a \$2,500 unsecured credit towards the purchase of certain furniture from the company.

5. James Ridout's testimony is to the effect that following receipt of notice of the union's application on December 2, 1975, Craig Coulter approached him with the view to convincing him (James) to discourage the employees from proceeding further with unionization. When this tactic failed, Craig then convened a meeting of the employees on January 14, 1976, at which time he had attempted by means of various threats to discourage Mike Ridout from continuing on as union steward. This ploy, which also took the form of direct physical and economic threats upon all the assembled employees, appeared to back-fire when James stood up and announced that henceforth he would be acting as the union steward in place of his brother. At this point, Craig allegedly replied as follows: "There is no way I am going to let you be the union steward and the only one who will be union steward is Doug Coulter. Even if I have to fire everybody to do it - that's the way it will be." Doug

Coulter, the evidence further discloses, is the younger cousin of Craig Coulter (and the son of Bill Coulter, the joint owner), and who at all relevant times, was a student employed by the respondent in a part-time capacity. James testified that following this meeting, he was subject thereafter to constant harassment from Craig.

6. James further testified that upon his return to the respondent's premises after performing various outside service calls during the afternoon of January 28, 1976, Craig asked him how the negotiations had gone that morning. According to James, Craig thereupon advised him that it was still not too late for him to change his mind and that since all of the employees looked up to him, they would soon follow his example should he now decide to sign off the union. Craig then proceeded to offer him the foreman's job which entailed a substantial increase in both salary and benefits. In addition, James stated that he was offered the use of a station wagon. Upon his refusal, James stated that Craig became enraged and proceeded to warn him that once a contract was negotiated "the union would put its own men in and that's when the union starts hurting families".

7. It is the union's contention in these proceedings that one of the reasons (if not the sole reason) for James Ridout's dismissal on February 5, 1976 was due to his acceptance of the union stewardship duties in the alleged circumstances as set out above.

8. Craig Coulter in his testimony before us categorically denied engaging in any anti-union activities. The main reasons for James' dismissal, he stated, were outlined to him in his letter dated February 5, 1976. This letter which was filed as an exhibit in these proceedings, provides as follows:

"Notice of dismissal of James Ridout because of the following reasons:

1. Deliberate damage to furniture
2. Did not report for work Feb 4, 1976, and did not call into office stating that he would not be in.
3. On Feb 3, 1976, he came in to work 15 min. late and at 9:15 am. he reported to Charles J. Coulter that he was sick and leaving from work and that he felt should not have to shovel snow at the store."

9. The evidence as adduced with respect to the first reason, establishes that sometime during the latter part of January, Craig Coulter had announced to the employees that Doug Coulter would be now acting as their foreman. On January 31, 1976, James and Doug were involved in an incident wherein James was accused by the respondent of having deliberately damaged a Kroehler chest in an effort to demean, embarrass and ridicule his newly-appointed supervisor. In this respect, Craig also referred to a previous incident on January 26, 1976, wherein he concluded that James had intentionally damaged a \$900 Grandfather clock. While we may conclude, having regard to all of the extensive evidence as adduced in this regard that Craig had some basis for surmising that James had wilfully punctured a hole in the backing of the chest by his improper use of a crow-bar, we cannot agree with Craig's assessment that James was responsible for damaging the clock. Further, with respect to the remaining two reasons cited for James' discharge, we would have some difficulty in the circumstances, in finding that James' action at these times warranted such a drastic disciplinary response on the part of the employer.

10. Be that as it may, the Board has held on many occasions, that the respondent, in Section 79 proceedings was not required to establish just cause for its actions in discharging an employee in a unionized setting. The Board has stated, prior to the addition of Section 79(4a) amendment to the Act effective June 18, 1975, that upon a *prima facie* case of union discrimination being established by the complainant, the onus then shifts to the respondent to satisfy the Board that the dismissal was not motivated, in whole or in part, by any anti-union animus on the part of the respondent. (In this regard, see *De Vilbiss (Canada) Limited* case [1975] OLRB Rep. September 678 and the *Delhi Metal Products Limited* case [1974] Rep. July 450). In other words, the respondent was required in these circumstances to provide the Board with a credible explanation that its actions were not contrary to the Act.

11. However, in our opinion, the complainant trade union in these proceedings has failed to establish a *prima facie* case, which before the introduction of Section 79(4a) would have been fatal to the complainant's case. In reaching this conclusion, we have some concern with the credibility of James Ridout as we have observed him by his demeanour, in the witness box, the manner in which he has testified, and the reasonableness of his testimony. We also note in this regard his negative answer on cross-examination concerning the question put to him as to whether, following the alleged arson incident transpiring during the evening of February 3 and the morning of February 4, 1976, he had conversed with Captain Semeniuk of the Windsor Fire Department, at the relevant time. Having regard to the testimony of both Inspector Fontaine and Captain Semeniuk as adduced by the respondent in defence, we are satisfied that such a conversation had taken place. Insofar as his testimony is in conflict with that given by Doug Coulter (whom we find, in all of the circumstances, to be a credible witness), we would prefer to accept Doug's testimony whenever it is in conflict with that elicited from James. However, we find, in all of the circumstances, that we cannot place any great reliance upon the testimony of Craig Coulter. In areas where his testimony directly conflicted with that elicited from James Ridout, the Board for the most part finds itself in the unenviable position of being unable to prefer the evidence of one witness to that of the other. In this regard, we further find that we can place no reliance whatsoever upon the testimony of Elvis Druer, an employee who testified in support of the complainant's position.

12. Having therefore carefully weighed the totality of the evidence (unsatisfactory as it is) as adduced through the witness called by the complainant trade union and the respondent, we find that, on the balance of probabilities, that the complainant has failed to establish that James' dismissal was motivated by any anti-union animus on the part of the respondent. On the other hand, we are satisfied that the respondent has not provided us with a credible reason for his discharge which is totally unrelated to James' union activity. In *The Barrie Examiner* case [1975] OLRB Rep. October 745, the Board contemplated such a situation where at page 747, the majority stated as follows:

"In many cases, however, often because of the unsatisfactory nature of the evidence, it may be difficult to draw either inference with much certainty. In such cases, where the evidence is equally balanced, a decision can only be rendered by resorting to the onus of proof. Since neither party can establish a case on the balance of probabilities, the case can only be determined by deciding against the party upon whom the burden of proof rests."

(See also the decision of the Board in *The Ideal Woodworking Limited* case [1970] OLRB Rep. June 346, as followed in the *Mohamed Salah Guindehi* case [1973] OLRB Rep. April 194.

13. Section 79(4a) of the Act provides as follows:

“On an inquiry by the board into a complaint under subsection 4 that a person has been refused employment, discharged, discriminated against, threatened, coerced, intimidated or otherwise dealt with contrary to this Act as to his employment, opportunity for employment or conditions of employment, *the burden of proof that any employer or employers’ organization did not act contrary to this Act lies upon the employer or employers’ organization.*”

[emphasis added]

14. In commenting upon this provision the Board in *The Barrie Examiner* case (supra) at page 749 continues as follows:

“What then is the extent of the burden of proof that has been shifted by statute to the respondent? The Act speaks of the burden of proof “that any employer... did not act contrary to this Act”. In its earlier decisions, this Board has stated that, even if only one of the reasons for a discharge related to union activity, the discharge would nevertheless constitute a violation of the Act. For a review of this jurisprudence, see *Delhi Metal Products Ltd.* [1974] O.L.R.B. 450. In other words, the appearance of a legitimate reason for discharge does not exonerate the employer, if it can be established that there also existed an illegitimate reason for the employer’s conduct. This approach effectively prevents an anti-union motive from masquerading as just cause. Given the requirement that there be absolutely no anti-union motive, the effect of the reversal of the onus of proof is to require the employer to establish two fundamental facts – first, that the reasons given for the discharge are the only reasons and, second, that these reasons are not tainted by any anti-union motive. Both elements must be established on the balance of probabilities in order for the employer to establish that no violation of the Act has occurred.”

15. Applying these principles to the circumstances of the instant case, we find that the respondent, Coulter & Sons (Windsor) Ltd., has failed to satisfy the onus cast upon it to establish that in its relations with the aggrieved person, James Ridout, it did not act contrary to the provisions of the Act.

16. In the result, the Board directs that James Ridout be reinstated forthwith into the employ of the respondent in a like capacity to that in which he was employed immediately prior to his termination. Failing agreement of the parties with respect to the amount of compensation to be assessed to him, if any, the Board remains seized of this matter.

1809-75-R Amalgamated Meat Cutters and Butcher Workmen of North America, A.F.L.-C.I.O.-C.L.C., (Applicant), v. **Robin Hood Multifoods Limited**, (Respondent), v. Group of Employees, (Objectors).

Certification – S7(a) – Whether the employers violation of the Act such that the true wishes of the employees are not likely to be ascertained.

BEFORE: D. H. Kates, Vice-Chairman, and Board Members J. D. Bell and E. Boyer.

APPEARANCES: *G. Charney and V. Gentile for the applicant; J. P. Sanderson, R. Pronovost and R. Tremblay for the respondent; H. Steeves, M. George and S. Pasquale for the objectors.*

DECISION OF D. H. KATES, VICE-CHAIRMAN, AND BOARD MEMBER J. D. BELL. May 4, 1976:

2. Having regard to the agreement of the parties, the Board further finds that all employees of the respondent at 50 Torlake Crescent, Toronto, save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation period, constitute a unit of employees of the respondent appropriate for collective bargaining.

3. A petition indicating opposition to representation by the applicant trade union was filed by approximately fifteen employees. Because the applicant's membership position would not have entitled it to a certificate for the bargaining unit described herein without the holding of a representation vote, the Board determined that it was not necessary to inquire into the origination, preparation and circulation of the statement.

4. Nevertheless, by letter dated March 12, 1976 the applicant filed allegations "that the employer has participated and interfered with the selection of a trade union and the representation of employees by a trade union contrary to section 56 of the Act, and also section 58 of the Act, and has sought by threats of dismissal and by promises to compel employees to cease to be members of the trade union contrary to sections 56, 58(a)(b)(c) and 61". As a result thereof, the request is made that the Board certify the applicant trade union under section 7a of the Act without the holding of a representation vote.

5. The applicant's organizational campaign commenced on or about the first week of March, 1976. On March 8, Mr. Robert Hysong was invited along with three of his colleagues to discuss the employee's grievances with the respondent's general manager Mr. Tremblay. The employees met with Mr. Tremblay and apparently a candid airing of employees' concerns ensued. Mr. Tremblay received their grievances with some sympathy but remarked that he didn't feel it was necessary for them "to organize" in order to have their complaints rectified. Mr. Tremblay was not the most forthcoming witness in explaining what he meant by "organize" but the Board has no misgiving in finding that he was referring specifically to the applicant's organizational campaign. In any event, the meeting terminated with Mr. Tremblay's suggestion that the four employees form a committee with a view to dealing with the employer's representatives in resolving some of the differences that had been discussed. Two days later the employees advised that they had sought the opinion of the other employees with respect to the respondent's proposal and the consensus was that the committee procedure ought to be rejected.

6. Mr. Tremblay thereupon contacted Mr. Ray Pronovost, the respondent's manager of industrial relations, for advice. Mr. Pronovost works out of the respondent's head office in Montreal. On the afternoon of March 11, 1976 the plant employees were invited to hear an address by Mr. Pronovost on the subject matter of the advantages and disadvantages of a trade union. In this regard, Mr. Pronovost prefaced his remarks by indicating that he was neither encouraging nor discouraging the employees from the exercise of their rights to join a trade union. Nevertheless, he did indicate that a trade union was not entitled to threaten or intimidate in persuading employees to join its organization. He admonished the employees from participating in the campaign during working hours on the employer's premises. Furthermore he advised that in the event employees who had joined wanted to change their minds they could get in touch with the Ministry of Labour for advice with respect to following the appropriate procedures. Thereupon Mr. Pronovost informed the assembly that some of the respondent's plants were represented by trade unions and in this context advised that mere representation by a trade union does not guarantee the fulfillment of promises made during the course of an organizational campaign. For example, he indicated by reference to its Port Colbourne plant that collective bargaining negotiations are often protracted and the fruits of these deliberations do not necessarily resolve employees' difficulties. An Italian interpreter was present for the purpose of translating the speech. Mr. Gentile, the applicant's business agent, told the Board that approximately 30% of the bargaining unit was composed of Italian speaking employees.

7. A question period followed Mr. Pronovost's address. Mr. Hysong stated that he challenged the fairness and the balance of the contents of the address. In other words, Mr. Hysong's view of the speech was that it was slanted too sharply against trade unions. In cross-examination, however, Mr. Hysong conceded that he would not have anticipated that the respondent would be "toting" the trade union. It is clear from the events of that afternoon that the respondent's purpose was to frustrate the applicant's campaign and that conclusion would not easily evade the most naive of employees.

8. The Board learned through the witness, Donald Cormier, that he and his colleague Robert Martin were laid off on Wednesday, March 9, 1976. Both were employed on the miscellaneous line of the respondent's production operation. They were advised at the time of the lay-off that it would be temporary and indeed Mr. Cormier at the date of the hearing had already been recalled and Mr. Martin was scheduled to return the following week. Mr. Cormier stated that he had a conversation prior to the lay-off with Mr. Billy Deer, a foreman, who had advised that the lay-offs resulted from the union's organizational campaign. Mr. Cormier admitted in cross-examination however that the conversation was of a general nature with respect to the campaign and that Mr. Deer could not have known that he was a supporter of the applicant's efforts. Schedule C filed by the respondent in reply to the application shows five other employees to be on lay-off because of a slow down in the respondent's business.

9. Mr. Gentile advised the Board that this was the applicant's second attempt to organize the respondent's employees. Although he had never been inside the respondent's premises he calculated that the bargaining unit was in large part composed of Italian speaking and older employees who would be intimidated by the interference of the respondent's employer. His view was that the campaign was aborted by the employer's intervention because a pall of fear permeated the atmosphere. In this regard the Board notes that Mr. Pronovost's speech was made on March 11, 1976, a day after the instant application for cer-

tification was filed. Furthermore, the evidence does not show that the applicant attempted to secure additional signatures between the application date and the terminal date set for March 18, 1976.

10. The issue raised before this Board is whether we ought to certify the applicant trade union notwithstanding its failure to secure the membership support of more than 55% of employees in the bargaining unit. In order for the Board to accede to the applicant's request to certify without the requirement of directing a representation vote we must be satisfied in accordance with the provisions of section 7a of the Act:

- (a) that the respondent employer contravened the Act,
- (b) that the contravention was such that the true wishes of the employees are not likely to be ascertained, and
- (c) that the applicant trade union has membership support adequate for the purposes of collective bargaining in the bargaining unit found appropriate in paragraph 2 herein.

11. During the course of argument, counsel did not address themselves to factor (c) but stressed factors (a) and (b). In dealing with factor (a) counsel for the applicant conceded that a case had not been made out that the respondent in effecting the lay-offs referred to in paragraph 8 herein were in contravention of section 58(a) of the Act. With respect to this particular aspect of the case, counsel relied solely on Mr. Pronovost's speech as being in contravention of section 56 of the Act. The Board in this regard agrees that counsel has indeed made out a strong case for a finding that the employer had exceeded the permissible limits of the Act in the exercise of its freedom to express his views and thereby wrongly interfered with the formation and selection by employees of a trade union contrary to section 56. Nevertheless, in disposing of the issues raised herein we do not find it necessary to make a definitive finding.

12. Assuming but without finding the employer has contravened section 56 of the Act, the Board, notwithstanding, has not been satisfied that such contravention would deprive employees from expressing their true wishes by the holding of a representation vote. In so concluding the Board does not construe section 7(a) of the Act to mean that a technical violation by the employer of an unfair labour practice provision of the Act *ipso facto* gives rise to a finding that a representation vote would be rendered superfluous. Some meaning must attach to the insertion into section 7(a) of the words "...so that the true wishes of employees...are not likely to be ascertained...". In other words, it must be demonstrated by some objective measure that the contravention of the Act, whether by an overt act or subtle subterfuge is so perverse that the likelihood of a meaningful expression of employee views is lost. Had it been the intention of the Legislature to pre-empt the holding of a representation vote upon the establishment of an employer contravention of the Act (and implicitly upon the establishment of an anti-union animus) then, of course, the words heretofore adverted to in section 7(a) would not have been necessary. There may be occasions, however, where the contravention would so obviously undermine the likelihood of a free vote (such as a direct or implicit threat to employees' job security) that no demonstrative evidence need be adduced with respect to factor (b).

13. In the situation before us, the Board may very well have set aside the petition had it been attributed to the speech given by Mr. Pronovost in the circumstances that were aptly described by counsel as “a captive audience”. If such had been the case then the Board would be constrained from concluding that the petition would have cast a doubt on the employees’ initial desire as expressed by the membership cards filed on their behalf. It does not follow however that the free expression of employees’ views will not be reflected in such circumstances where it is known that in a different setting and at a later date a representation vote is to be directed under the supervision of the Board where ballots are to be secretly cast. For the Board to hold otherwise in the circumstances of this case would induce us to waive in all cases the holding of a representation vote by virtue of the mere projection by the employer to his employees of an anti-union posture. Not only would such a proposition be patently impractical and unrealistic but it would also undermine the very efficacy of representation votes as contemplated under section 7(2) of the Act. In other words, the Board does not construe the introduction of section 7a as a vehicle to evade the consequences of a vote but as a substitute where a vote is rendered nugatory by the employer’s wrongdoings. (See, *Smith Beverages Limited* case [1975] OLRB Rep. December 956 at p.961).

14. The Board is satisfied on the basis of all the evidence before it that not less than forty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant on March 18, 1976, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

15. A representation vote will be taken of the employees of the respondent in the bargaining unit. All employees of the respondent in the bargaining unit on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is taken will be eligible to vote.

16. Voters will be asked to indicate whether or not they wish to be represented by the applicant in their employment relations with the respondent.

17. The matter is referred to the Registrar.

DECISION OF BOARD MEMBER E. BOYER.

Having regard to all of the evidence and the representations of the parties thereto, I would have dispensed with the representation vote and issued a certificate granting the applicant bargaining rights.

CASE LISTINGS MAY 1976

	Page
1. Certification	
(a) Bargaining Agents Certified	71
(b) Applications Dismissed	83
(c) Applications Withdrawn	84
2. Applications for Declaration Terminating Bargaining Rights	85
3. Application for Declaration of Successor Status	86
4. Applications for Declaration that Strike Unlawful	87
5. Applications for Consent to Prosecute	87
6. Complaints under Section 79 (Unfair Labour Practice)	87
7. Application under Section 39	89
8. Applications for Consent to Early Termination of Collective Agreement	89
9. Application under Section 55	89
10. Application under Section 76 (Financial Statement Requested By Trade Union Member).	89
11. Jurisdiction Disputes	89
12. Applications for Determination under Section 95(2)	90
13. Reference to Board Pursuant to Section 96	90
14. Applications under Section 112a	90
15. Applications for Reconsideration of Board's Decision	91

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING MAY 1976

Applications for Certification

BARGAINING AGENTS CERTIFIED

No Vote Conducted

1572-75-R: Canadian Union of Public Employees (Applicant) v. The Manitoulin Board of Education (Respondent).

Unit: "all office, clerical and technical employees of the respondent save and except supervisors, persons above the rank of supervisor, secretary to the Director of Education, secretary to the superintendent of Business Administration, counsellor aides, persons regularly employed for not more than 24 hours per week, students employed during the school vacation period and persons covered by a subsisting collective agreement between the Canadian Union of Public Employees, Local 1627 and the respondent." (30 employees in the unit). (*clarity note* – see Report of full decision [1976]OLRB Rep. May).

1681-75-R: Retail Clerks International Association (Applicant) v. Safeguard Drugs Ltd. (Respondent) v. Group of Employees (Objectors).

Unit #1: "all employees of the respondent at its stores in the City of Burlington, Ontario, save and except merchandise manager, persons above the rank of merchandise manager, merchandise manager trainees, pharmacists, pharmacist interns, student pharmacists, persons regularly employed for not more than twenty-four (24) hours per week and students employed during the school vacation period." (8 employees in the unit).

Unit #2: "all employees of the respondent at its stores in the City of Burlington regularly employed for not more than twenty-four (24) hours per week and students employed during the school vacation period, save and except merchandise manager, persons above the rank of merchandise manager, merchandise manager trainees, pharmacists, pharmacist interns and student pharmacists." (12 employees in the unit).

1778-75-R: Hotels, Clubs, Restaurants, Tavern Employees' Union Local 261 (Applicant) v. New Strathcona Hotel (Toronto) Ltd. – Berkeley Savoy Hotel (Respondent) v. Group of Employees (Objectors).

Unit: "all full-time employees of the respondent at the Berkley Savoy Hotel in Ottawa save and except manager, assistant manager, front desk clerks, office staff and persons regularly employed for not more than 24 hours per week." (34 employees in the unit). (*Having regard to the agreement of the parties*).

1831-75-R: Service Employees Union, Local 210, affiliated with Service Employees International Union, AFL-CIO-CLC (Applicant) v. University of Windsor (Respondent) v. Employee (Objectors).

Unit: "all clerical, secretarial and office employees employed by the University of Windsor at Windsor, Ontario save and except: supervisors and persons above the rank of supervisor, persons employed to undertake specific sponsored research projects; full and part-time officers of instruction together with instructors, sessional appointees, teaching assistants and postdoctoral fellows engaged in teaching and/or research; medical doctors and registered nurses; professional librarians; persons employed in the University Library holding the rank of department head or above, administrative assistants and research assistants and systems analysts and persons above such ranks employed in University libraries; persons regularly employed for not more than twenty-four (24) hours per week; students, and persons engaged in the following positions: Secretary to the President; Research Assistant to the Senior Vice-President; Secretary to the Vice-President – Academic, Secretary to the Vice-President – Administration & Treasurer; Secretary to the Director of Personnel Services; Secretary to the Manager, Service Records and Benefits, Secretary to the Manager, Staff Recruitment; Secretary to the Manager, Salary and Wage Administration, Secretary to the Budget Supervisor; Programmers and Systems Analysts, Secretary to the Data Base Manager; Secretary to the Assistant to the Vice-President – Administration, Secretary to the Secretary of the Board of Governors, Secretary to the Registrar, Secretary to the Secretary of the Senate, one Secretary to each Administrative Director and persons above the rank of Administrative Director; Special Assistants to Deans, Secretaries to the University Librarian and Secretary to the Law Librarian, Supervisor of the Switchboard; Assistant Registrars, Chauffeurs; Institutional Research Analyst; and save and except persons covered by subsisting collective agreements with the United Plant Guard Workers of America, Local 1958; Canadian Union of Operating Engineers, Local 102; Canadian Union of Public Employees, Local 1393, and the Canadian Union of Public Employees, Local 1001," (390 employees in the unit). (*Having regard to the agreement of the parties*).

1833-75-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. The Diebold Company of Canada Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent company in Barrie, Ontario, save and except foremen, those above the rank of foreman, office and sales staff." (52 employees in the unit). (*Having regard to agreement of the unit*).

1867-75-R: University of Windsor Faculty Association (Applicant) v. University of Windsor (Respondent) v. Group of Employees (Objectors).

Unit: "all full-time academic staff including Professional Librarians employed by the University of Windsor in the City of Windsor in the County of Essex in the Province of Ontario save and except members of the Board of Governors, President, Vice-Presidents, Deans, University Librarian, and Secretary to Board of Governors." (648 employees in the unit). (*Having regard to the agreement of the parties*). (*Clarity note – Report of full decision [1976] OLRB Rep. May*).

1870-75-R: Service Employees Union, Local 210 affiliated with Service Employees International Union, A.F.L.-C.I.O.-C.L.C. (Applicant) v. Maitland Manor Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Goderich, Ontario save and except supervisors, persons above the rank of supervisor, office staff, professional medical staff, registered nurses, physiotherapists, dieticians, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (19 employees in the unit). (*Having regard to the agreement of the parties*).

1887-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. A & C Janitorial Services Limited (Respondent).

Unit: “all employees of the respondent engaged in cleaning maintenance at Queensview apartments, Weston, including resident superintendents, save and except property managers, persons above the rank of property manager, office and clerical staff.” (3 employees in the unit). (*Having regard to the agreement of the parties*).

1938-75-R: The United Brotherhood of Carpenters and Joiners of America (Applicant) v. Northern Wood Home Canadian Limited (Respondent).

Unit: “all employees of the respondent working at and out of its manufacturing plant in Keewatin, save and except supervisors, persons above the rank of supervisor, office and sales staff, and students employed during the school vacation period.” (12 employees in the unit).

0056-76-R: Teamsters, Chauffeurs, Warehousemen and Helpers Local 141 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Spramotor Ltd. (Respondent).

Unit: “all employees of the respondent working at London, Ontario, save and except foremen, those above the rank of foreman, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period.” (14 employees in the unit).

0061-76-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Brad-Lea Meadows Limited (Respondent).

Unit: “all carpenters, carpenters’ apprentices and construction labourers in the employ of the respondent on construction projects in the Counties of Essex and Kent, save and except non-working foremen and persons above the rank of non-working foreman.” (6 employees in the unit). (*Having regard to the agreement of the parties*). (*clarity note – see Report of full decision [1976] OLRB Rep. May*).

0062-76-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Giesbrecht Construction (Respondent).

Unit: “all carpenters, carpenters’ apprentices and construction labourers in the employ of the respondent in the district of Kenora, including the Patricia Portion, save and except non-working foremen and persons above the rank of non-working foreman.” (4 employees in the unit).

0066-76-R: Canadian Chemical Workers Union (Applicant) v. Custom Converters Printers Limited (Respondent) v. Employees (Objectors).

Unit: “all employees of the respondent at its plant in Mississauga, Ontario, save and except foremen, those above the rank of foreman, office and sales staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period.” (32 employees in the unit). (*Having regard to the agreement of the parties*). (*clarity note – see Report of full decision [1976] OLRB Rep. May*).

0072-76-R: International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Jade Electric Limited (Respondent).

Unit: “all electricians and electricians’ apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman.” (5 employees in the unit).

0082-76-R: Retail Clerks Union, Local 486 (Applicant) v. Larry Hartman Enterprises Ltd. (Respondent).

Unit #1: "all employees of the company employed in the retail stores owned and/or operated by the company in Ottawa, Ontario, save and except store managers persons above the rank of store manager, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (8 employees in the unit). (*Having regard to the agreement of the parties*).

Unit #2: "all employees of the company employed in the retail stores owned and/or operated by the company in Ottawa, Ontario, regularly employed for not more than 24 hours per week and students employed during the school vacation period, save and except store managers persons above the rank of store manager." (10 employees in the unit). (*Having regard to the agreement of the parties*).

0087-76-R: International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Benda Electric Contractor Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all electricians and electricians' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

0090-76-R: Service Employees Union Local 268 (Applicant) v. Lappas Brothers Food Service Limited (Respondent).

Unit: "all employees of the respondent at Van Daele Manor in Sault Ste. Marie regularly employed for not more than 24 hours per week save and except supervisors, foremen, persons above the rank of supervisor or foreman and office staff." (11 employees in the unit).

0091-76-R: Service Employees Union Local 268 (Applicant) v. Lappas Brothers Food Service Limited (Respondent).

Unit: "all employees of the respondent at Van Daele Manor in Sault Ste. Marie save and except supervisors, foremen, persons above the rank of supervisor or foreman, office staff, employees regularly employed for not more than 24 hours per week and students employed during the school vacation period." (11 employees in the unit).

0094-76-R: Canadian Food and Allied Workers Local Union 725, Chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. Intercity Food Services Inc. (Respondent).

Unit: "all employees of the respondent in Brantford, Ontario save and except (manager and/or assistant manager) persons above the rank of (manager and/or assistant manager) and persons regularly employed for not more than 24 hours per week." (6 employees in the unit).

0100-76-R: International Union of Operating Engineers, Local 793 (Applicant) v. Pitts Engineering Construction Limited (Respondent).

Unit: "all employees of the respondent in the District of Thunder Bay engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen, persons above the rank of non-working foreman and persons covered by a subsisting collective agreement." (5 employees in the unit).

0105-76-R: Textile Workers Union of America, CLC, AFL-CIO (Applicant) v. Riverside Yarns Limited (Respondent).

Unit: “all employees of the respondent at its plant at Cornwall save and except assistant production managers, persons above the rank of assistant production manager, storekeeper, instructors in plant training school for employees, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period.” (120 employees in the unit). (*Having regard to the agreement of the parties*).

0118-76-R: Association of Allied Health Professionals: Ontario (Applicant) v. The Trustees of the Ottawa Civic Hospital (Respondent) v. Ontario Nurses’ Association (Intervener) v. Employee (Objector).

Unit #1: “all physiotherapists, occupational therapists, pharmacists, and therapeutic dietitians in the employ of the respondent in Ottawa, save and except supervisors, persons above the rank of supervisor, persons regularly employed for not more than twenty-four hours per week and persons covered by subsisting collective agreements.” (22 employees in the unit). (*Having regard to the agreement of the parties*). (*Certified*).

Unit #2: “all physiotherapists, occupational therapists, pharmacists, and therapeutic dietitians in the employ of the respondent in Ottawa for not more than twenty-four hours per week, save and except supervisors, persons above the rank of supervisor and persons covered by subsisting collective agreements.” (11 employees in the unit). (*Having regard to the agreement of the parties*). (*Dismissed*).

0122-76-R: Labourers’ International Union of North America, Local 183 (Applicant) v. Greenwin Property Management Ltd. (Respondent).

Unit: “all employees of the respondent engaged in cleaning and maintenance at 30, 40, 50, 60 and 70 and 80 Blake Street, and at 10 and 20 Boltbee Street, in Metropolitan Toronto, including resident superintendents, save and except property managers, persons above the rank of property manager, office and clerical staff.” (4 employees in the unit). (*Having regard to the agreement of the parties*).

0123-76-R: Labourers’ International Union of North America, Local 183 (Applicant) v. Greenwin Property Management Ltd. (Respondent).

Unit: “all employees of the respondent engaged in cleaning and maintenance at 1055, 1057, 1059 Don Mills Road, 1004 Lawrence Avenue East, 8, and 10 The Donway East, 2, 4, 6, 8 and 10 Wingreen Court, 110B Cottonwood Drive, Don Mills, Metropolitan Toronto, including resident superintendents, save and except property managers persons above the rank of property manager, office and clerical staff.” (8 employees in the unit). (*Having regard to the agreement of the parties*).

0127-76-R: Local Union 1190, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Patz & Leo Construction Ltd. (Respondent).

Unit: “all carpenters and carpenters’ apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman.” (5 employees in the unit).

0132-76-R: Textile Workers Union of America, CLC, AFL-CIO (Applicant) v. Trenton Textile Mills Limited (Respondent).

Unit: "all employees of the respondent at its plant at 48 Film Street in Trenton, save and except foremen, foreladies, persons above the rank of foreman, forelady, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (17 employees in the unit). (*Having regard to the agreement of the parties*).

0133-76-R: International Brotherhood of Electrical Workers, Local Union 353 (Applicant) v. Sala Electric Limited (Respondent).

Unit: "all electricians and electricians' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (9 employees in the unit).

0140-76-R: Hotel and Restaurant Employees' and Bartenders' International Union, Local 412 (Applicant) v. Roosevelt Hotel (Sault Ste. Marie) Limited (Respondent).

Unit: "all employees of the respondent at Sault Ste. Marie, save and except manager, persons above the rank of manager, students employed during the school vacation period and employees regularly employed for not more than 24 hours per week." (12 employees in the unit). (*Having regard to the agreement of the parties*).

0142-76-R: United Steelworkers of America (Applicant) v. Servicraft Enterprises Limited (Respondent).

Unit: "all employees of the respondent at Ottawa, employed as oil burner servicemen, save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation period." (4 employees in the unit).

0145-76-R: International Molders & Allied Workers Union (Applicant) v. Goodwill Electric Supplies Limited (Respondent).

Unit: "all office and clerical employees of the respondent at Niagara Falls, Ontario, save and except the Branch Manager, the assistant to the Branch Manager, commission salesmen, supervisors, persons above the rank of supervisor and those persons covered by a previous application, Board File # 1741-75-R." (7 employees in the unit). (*Having regard to the agreement of the parties*).

0146-76-R: International Molders & Allied Workers Union (Applicant) v. Union Electric Supply Co. Limited (Respondent).

Unit: "all office and clerical employees of the respondent at Kitchener, Ontario, save and except the Branch Manager, the assistant to the Branch Manager, purchasing agent(s), commission salesmen, supervisors, persons above the rank of supervisor and persons covered by the application in Board File # 1742-75-R." (5 employees in the unit). (*Having regard to the agreement of the parties*).

1049-76-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Applicant) v. Motorco Truck Divisions (Windsor) Credit Union Limited (Respondent).

Unit: "all office and clerical employees of the respondent at Windsor, save and except supervisors, persons above the rank of supervisor, and all Directors of the Board." (3 employees in the unit).

0151-76-R: Local Union 105, International Brotherhood of Electrical Workers (Applicant) v. Simcoe Electric Limited (Respondent) v. Group of Employees (Objectors).

Unit: “all electricians, electricians’ apprentices, refrigeration mechanics and refrigeration mechanics’ apprentices in the employ of the respondent in the Counties of Brant and Norfolk, save and except non-working foremen and persons above the rank of non-working foreman.” (12 employees in the unit). (*Having regard to the agreement of the parties*).

0152-76-R: Operative Plasterers and Cement Masons’ International Association of the United States and Canada, Local 124 Ottawa-Hull (Applicant) v. C & B Drywall (Respondent).

Unit: “all plasterers and plasterers’ apprentices in the employ of the respondent in the Regional Municipality of Ottawa-Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman.” (5 employees in the unit). (*clarity note* – see Report of full decision [1976] OLRB Rep. May).

0155-76-R: International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Primary Electric Limited (Respondent).

Unit: “all electricians and electricians’ apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, The Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman.” (9 employees in the unit).

0174-76-R: Teamsters Union, Local 938, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. New North Timmins Leasing Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: “all employees of the respondent at Timmins, Ontario, save and except the manager, persons above the rank of manager and office staff.” (8 employees in the unit). (*Having regard to the agreement of the parties*).

0188-76-R: Labourers’ International Union of North America, Local 1081 (Applicant) v. Villane Developments Limited (Respondent).

Unit: “all construction labourers in the employ of the respondent in the County of Wellington, save and except non-working foremen and persons above the rank of non-working foreman.” (8 employees in the unit).

0189-76-R: Christian Labour Association of Canada (Applicant) v. J. B. Carroll Electric Limited (Respondent).

Unit: “all electricians and electricians’ apprentices in the employ of the respondent in the Townships of Shakespeare, Baldwin, Nairn, Hallam, Merritt, Foster, McKinnon, Mongowin and Curtin in the District of Sudbury excepting those portions of the Townships of Nairn and Foster which are included in the area encompassed by the thirty-five mile radius from the Sudbury Federal Building, save and except non-working foremen and persons above the rank of non-working foreman.” (2 employees in the unit). (*Having regard to the foregoing*).

0190-76-R: Christian Labour Association of Canada (Applicant) v. Shar-Dee Contracting Ltd. (Respondent).

Unit: "all carpenters, carpenters' apprentices, construction labourers, bricklayers and bricklayers' apprentices in the employ of the respondent in the County of Lennox and Addington and the County of Frontenac and the Townships of Rear of Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit). (*Having regard to the foregoing*).

0195-76-R: International Association of Bridge, Structural and Ornamental Iron Workers Local Union No. 700 (Applicant) v. Cecco Supply Limited (Respondent).

Unit: "all ironworkers and ironworkers' apprentices in the employ of the respondent in the County of Lambton, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

0196-76-R: Christian Labour Association of Canada (Applicant) v. Maple Engineering & Construction Company Limited (Respondent).

Unit: "all carpenters, carpenters' apprentices and construction labourers in the employ of the respondent in the County of Lennox and Addington, and the County of Frontenac and the Townships of Rear of Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, save and except non-working foremen and persons above the rank of non-working foreman." (9 employees in the unit). (*Having regard to the foregoing*).

0197-76-R: United Brotherhood of Carpenters and Joiners of America Local Union 93 (Applicant) v. Collaving Bros. Const. Co. Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the United Counties of Stormont, Dundas and Glengarry, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

0200-76-R: Labourers' International Union of North America, Local 183 (Applicant) v. Greenwin Property Management Ltd. (Respondent).

Unit: "all employees of the respondent engaged in cleaning and maintenance at York Mills Heights (YCC 217) and York Mills Valley (YCC 50) Apartments, Don Mills, including resident superintendents, save and except property managers, persons above the rank of property manager, office and clerical staff." (6 employees in the unit). (*Having regard to the agreement of the parties*).

0201-76-R: Labourers' International Union of North America, Local 183 (Applicant) v. Greenwin Property Management Ltd. (Respondent).

Unit: "all employees of the respondent engaged in cleaning maintenance at 80 Grandravine Drive, Downsview, including resident superintendents, save and except property managers, persons above the rank of property manager, office and clerical staff." (2 employees in the unit). (*Having regard to the agreement of the parties*).

0202-76-R: Ontario Nurses Association (Applicant) v. The Corporation of the City of Kingston (Rideaucrest Home For The Aged) (Respondent).

Unit: "all registered and graduate nurses employed in a nursing capacity at the Rideaucrest Home For The Aged at Kingston save and except Unit Supervisor and/or Director of Nursing and persons above that rank." (not stated employees in the unit).

0210-76-R: Labourers' International Union of North America, Local 183 (Applicant) v. Greenwin Property Management Ltd. (Respondent).

Unit: "all employees of the respondent engaged in cleaning and maintenance at Caledonia Village (YCC 46), Toronto, including resident superintendents, save and except property managers, persons above the rank of property manager, office and clerical staff." (11 employees in the unit). (*Having regard to the agreement of the parties*).

0217-76-R: United Brotherhood of Carpenters and Joiners of America, Local Union No. 38 (Applicant) v. Marine Wonderland & Animal Park Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent on construction projects in the Regional Municipality of Niagara and the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit). (*Having regard to the circumstances*).

0218-76-R: Chatham Construction Workers Association, Local No. 53, affiliated with the Christian Labour Association of Canada (Applicant) v. Mikon Electric Limited (Respondent).

Unit: "all electricians, electricians' apprentices and construction labourers in the employ of the respondent in the Counties of Essex and Kent, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

0220-76-R: International Union of Operating Engineers, Local 793 (Applicant) v. Maloney Construction Ltd. (Respondent).

Unit: "all employees of the respondent in the United Counties of Stormont, Dundas and Glengarry engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

0228-76-R: Labourers' International Union of North America, Local 183 (Applicant) v. Pembina Investments Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario employed on residential construction, save and except construction labourers employed as helpers of bricklayers and plasterers, non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

0239-76-R: Labourers' International Union of North America, Local 837 (Applicant) v. Gibbs Construction Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Regional Municipality of Niagara and the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

0240-76-R: Labourers' International Union of North America, Local 837 (Applicant) v. Halton Renovations Ltd. (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Regional Municipality of Niagara and the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

0246-76-R: Canadian Union of Public Employees (Applicant) v. Toronto Public Library Board (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent save and except for persons regularly employed for not more than twenty-four hours per week, maintenance and custodial staff, the superintendent of buildings and grounds, those above the rank of area librarian, the administrative assistant in the personnel office, the principal clerical assistant code 4 in the personnel office, the confidential secretary to the chief librarian and the administrative assistant for board and committees." (351 employees in the unit).

0254-76-R: Operative Plasterers and Cement Masons' International Association of the United States and Canada, Local #124 Ottawa – Hull (Applicant) v. Neves Construction Company Limited (Respondent).

Unit: "all plasterers and plasterers' apprentices in the employ of the respondent in the Regional Municipality of Ottawa – Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit). (*clarity note* – Report of full decision [1976] OLRB Rep. May).

0255-76-R: Labourers' International Union of North Local 1036 (Applicant) v. George Ryder Construction Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in that portion of the District of Algoma south of the 49th parallel of latitude, save and except non-working foremen and persons above the rank of non-working foreman." (8 employees in the unit).

0258-76-R: Labourers' International Union of North America, Local 837 (Applicant) v. C-E Refractories by R & I Ramtite (Canada) Limited a division of Combustion Engineering Inc. (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Regional Municipality of Niagara and the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

0260-76-R: International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Marty's Electric Company (Respondent).

Unit: "all electricians and electricians' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).

0262-76-R: Teamsters Local Union No. 230, Ready Mix, Building Supply, Hydro and Construction Drivers, Warehousemen and Helpers (Applicant) v. Mizzi Bros. Construction (Respondent).

Unit: "all truck drivers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

0271-76-R: Chatham Construction Workers Association Local No. 53, affiliated with the Christian Labour Association of Canada (Applicant) v. Mack Glass Limited (Respondent).

Unit: “all glaziers and metal mechanics and their apprentices in the employ of the respondent in the Counties of Essex and Kent, save and except non-working foremen and persons above the rank of non-working foreman.” (2 employees in the unit). (*Having regard to the foregoing*).

0274-76-R: International Union of Operating Engineers, Local 793 (Applicant) v. Moffatt Construction & Materials Limited (Respondent).

Unit: “all employees of the respondent in the Regional Municipality of Ottawa-Carleton and the United Counties of Prescott and Russell engaged in the operation of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman.” (17 employees in the unit).

0276-76-R: Operative Plasterers and Cement Masons’ International Association of the United States and Canada, Local 124 Ottawa – Hull (Applicant) v. Galicia Stucco & Drywall Ltd. (Respondent).

Unit: “all plasterers and plasterers’ apprentices in the employ of the respondent in the Regional Municipality of Ottawa – Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman.” (3 employees in the unit). (*clarity note* – see Report of full decision [1976] OLRB Rep. May).

0277-76-R: Labourers’ International Union of North America, Local 837 (Applicant) v. Border Masonry (Respondent).

Unit: “all construction labourers in the employ of the respondent in the Regional Municipality of Niagara and the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman.” (3 employees in the unit).

0289-76-R: Ready-Mix, Building Supply, Hydro & Construction Drivers, Warehousemen and Helpers Local 230 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Michael Bros. Excavating a Division of/or operated by Royal Excavating and Grading Limited (Respondent).

Unit: “all truck drivers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman.” (8 employees in the unit).

0290-76-R: Ontario Nurses’ Association (Applicant) v. Royal Ottawa Hospital (Respondent).

Unit: “all registered and graduate nurses engaged in a nursing capacity regularly employed by the Royal Ottawa Hospital, Ottawa, for not more than 24 hours per week, save and except head nurses, persons above the rank of head nurse, clinical co-ordinator, staff health nurse, inservice coordinator, senior emergency nurse, staffing coordinator, students employed during the school vacation period and persons covered by subsisting collective agreements.” (not stated employees in the unit). (*Having regard to the agreement of the parties*).

0294-76-R: International Association of Bridge, Structural and Ornamental Iron Workers, Local Union 721 (Applicant) v. Hildebrandt Iron Works Ltd. (Respondent).

Unit: "all ironworkers and ironworkers' apprentices in the employ of the respondent in the Counties of Peterborough, Victoria and the Provisional County of Haliburton, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

0317-76-R: Christian Labour Association of Canada (Applicant) v. Indian Bay Limited (Respondent).

Unit: "all electricians, electricians' apprentices, plumbers and plumbers' apprentices in the employ of the respondent in the Townships of Kerns, Harley, Casey, Hudson, Dymond, Harris, Firstbrook and Bucke in the District of Timiskaming, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit). (*Having regard to the foregoing*).

Applications Certified Subsequent to Pre-Hearing Vote

1769-75-R: Canadian Workers Union (Applicant) v. Star Steel Ltd. (Respondent) v. Mr. Fred Childs in his capacity as the Administrator of the Trusteeship over Local 16503 of the United Steelworkers of America (Intervener).

Unit: "all employees of the respondent at Milton, save and except foremen, persons above the rank of foreman, office and sales staff, students employed during the school vacation period and persons regularly employed for not more than twenty-four hours per week." (70 employees in the unit).

Number of names of persons on revised voters' list		36
Number of persons who cast ballots		34
Number of ballots marked in favour of applicant	29	
Number of ballots marked in favour of intervener #2	5	

1832-75-R: Canadian Chemical Workers Union (Applicant) v. Chemical Developments of Canada Limited (Respondent) v. International Chemical Workers Union (Intervener).

Unit: "all employees of the respondent employed in its plant in Longford Mills, Ontario save and except office staff, (which include clerical, sales, engineering, accounting and managerial Personnel), Supervisory employees, all above and including the Rank of Foreman, all part time and temporary employees, and employees who have not completed their probationary period." (57 employees in the unit).

Number of persons on revised voters' list		57
Number of persons who cast ballots		53
Number of ballots marked in favour of applicant	40	
Number of ballots marked in favour of intervener	13	

1893-75-R: The Canadian Union of Public Employees (Applicant) v. Metropolitan Separate School Board (Respondent).

Unit: "all teacher aides employed by the Metropolitan Separate School Board in Metropolitan Toronto, save and except supervisors, persons above the rank of supervisors and persons regularly employed for not more than twenty-four (24) hours per week." (91 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on voters' list as originally prepared by employer		84
Number of persons who cast ballots		72
Number of ballots marked in favour of applicant	50	
Number of ballots marked against applicant	22	

0015-76-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union No. 647, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. The Valley View Dairies Limited (Respondent) v. Retail, Wholesale and Department Store Union, AFL-CIO-CLC and its Local 440 (Intervener).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen persons above the rank of foreman, office staff, sales contract men, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (28 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on revised voters' list		29
Number of persons who cast ballots		26
Number of ballots marked in favour of applicant	22	
Number of ballots marked in favour of respondent	4	

0029-76-R: Canadian Union of Operating Engineers (Applicant) v. Smiths Falls Public Hospital (Respondent) v. International Union of Operating Engineers, Local 796 (Intervener).

Unit: "all Stationary Engineers and those persons primarily engaged as their Helpers employed in the Power House, save and except Chief Engineer, and those above the rank of Chief Engineer." (5 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on list as originally prepared by employer		6
Number of persons who cast ballots		5
Number of ballots marked in favour of applicant	5	
Number of ballots marked in favour of intervener	0	

0067-76-R: Canadian Chemical Workers Union (Applicant) v. Canadian International Paper Company Container Division (Respondent) v. International Chemical Workers Union and its Affiliated Local 229 London, Ontario (Incumbent Trade Union).

Unit: "all employees of the respondent at London, Ontario, save and except foremen, those above the rank of foreman, sales and office staff and security guards." (179 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on list as originally prepared by employer		194
Number of persons who cast ballots		120
Number of ballots marked in favour of applicant	105	
Number of ballots marked in favour of incumbent trade union	15	

APPLICATIONS FOR CERTIFICATION DISMISSED

No Vote Conducted

7004-74-R: Labourers' International Union of North America, Local 183 (Applicant) v. Correct Property Management (Respondent). (not stated employees).

1151-75-R: Retail Clerks International Association (Applicant) v. Zehr's Markets Limited (Respondent) v. Diamond "Z" Association (Intervener) v. Group of Employees (Objectors). (218 employees).

1928-75-R: International Ladies Garment Workers Union (Applicant) v. Di Pilla Fashions (Respondent). (4 employees).

0009-76-R: United Brotherhood of Carpenters & Joiners of America, Local 2486 (Applicant) v. Romm Construction Company Ltd. (Respondent) v. Labourers' International Union of North America, Local 493 (Intervener). (11 employees).

0065-76-R: Hotel and Restaurant Employees and Bartenders International Union A.F.L. C.I.O. C.L.C. (Applicant) v. Red Oak Inn, Peterborough (Respondent). (13 employees).

0115-76-R: Heatex Employees Association of Toronto (Applicant) v. Heatex, Div. of James B. Carter Limited (Respondent) v. United Steelworkers of America (Intervener). (87 employees).

0216-76-R: Labourers' International Union of North America, Local 183 (Applicant) v. Granger Pre-Fab Ltd. (Respondent). (9 employees).

0233-76-R: Trenton Textile Mills Employees Association (Applicant) v. Trenton Textile Mills Limited (Respondent). (23 employees).

0238-76-R: Labourers International Union of North America Local Union 493 (Applicant) v. Zoltan Fuisz Masonary Contractors (Respondent). (6 employees).

0256-76-R: International Brotherhood of Electrical Workers Local Union 773 (Applicant) v. Waffle's Electric Limited (Respondent). (18 employees).

Certification Dismissed Subsequent to Post-Hearing Vote

1860-75-R: The Canadian Union of Public Employees (Applicant) v. Windsor Western Hospital Centre Inc. (Respondent) v. Ontario Nurses' Association (Intervener) v. Group of Employees (Objectors).

Unit: "all employees of the Windsor Western Hospital Centre Inc. at its Regional Children Centre save and except supervisors persons above the rank of supervisor, Physicians, Co-ordinators, Assistant Co-ordinators, Secretary to the Director, persons covered by subsisting collective agreements and persons employed for not more than 24 hours per week and students." (60 employees in the unit).

Number of names of persons on list as originally prepared by employer		60
Number of persons who cast ballots	40	
Number of spoiled ballots	0	
Number of ballots marked in favour of applicant	4	
Number of ballots marked against applicant	36	

APPLICATIONS FOR CERTIFICATION WITHDRAWN

0124-76-R: Labourers' International Union of North America, Local 183 (Applicant) v. Greenwin Property Management Ltd. (Respondent). (8 employees).

0126-76-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Kenwood Hotel (Respondent). (3 employees).

0168-76-R: United Plant Guard Workers, Local 1962 (Applicant) v. Flamboro Downs Holdings Limited (Respondent). (9 employees).

0191-76-R: Operative Plasterers and Cement Masons' International Association of the United States and Canada, Local 124 (Applicant) v. C & C Drywall (Respondent). (3 employees).

0208-76-R: Labourers' International Union of North America, Local 183 (Applicant) v. S & N Concrete Contractors Ltd. (Respondent) v. The General Contractors' Section of the Toronto Construction Association (Intervener #1) v. Local 598 of the Operative Plasterers' and Cement Masons' International Association of the United States and Canada (Intervener #2). (3 employees).

0219-76-R: The United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local Union 527, Kitchener (Applicant) v. Keigh Reinhardt Mechanical, Division of One Step Holdings Ltd. (Respondent) v. Employee (Objector). (2 employees).

0245-76-R: Canadian Union of Public Employees (Applicant) v. Metropolitan Separate School Board (Respondent). (51 employees).

0265-76-R: United Brotherhood of Carpenters and Joiners of America, Local 18 (Applicant) v. Pigott Construction (Respondent). (10 employees).

0266-76-R: Labourers' International Union of North America, Local 183 (Applicant) v. Belmont Property Management Ltd. (Respondent). (2 employees).

0272-76-R: Oil & Gas Technicians, Service, Domestic & General Workers Union Local 1267, L.I.U. of N.A. (Applicant) v. Gil's Fine Foods Limited (Respondent). (18 employees).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

1782-75-R: Ed Pelletier (union steward) (Applicant) v. Retail, Wholesale and Department Store Union (Respondent). (*Granted*).

Unit: "all counter, warehouse and office staff of Acklands Ltd." (8 employees in the unit).

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	12
Ballots segregated and not counted	1
Number of ballots marked in favour of respondent	1
Number of ballots marked against respondent	10

1855-75-R: Rawhatle Campbell (Applicant) v. Service Employees Union Local 204 Affiliated with the AFL-CIO-CLC (Respondent) v. Birchcliffe Nursing Homes Limited (Intervener). (28 employees). (*Dismissed*).

1864-75-R: Horst Taschner (Applicant) v. Local Union 2345 International Brotherhood of Electrical Workers A.F.L.-C.I.O.-C.L.C. (Respondent) v. Mitten Industries Galt Limited (Intervener). (*Granted*).

Unit: "all employees of Mitten Industries Galt Limited at Cambridge (Galt) Ontario, save and except foremen, persons above the rank of foreman, office staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation periods." (41 employees in the unit).

Number of names of persons on revised voters' list		43
Number of persons who cast ballots		41
Number of spoiled ballots	1	
Number of ballots marked in favour of respondent	7	
Number of ballots marked against respondent	33	

0083-76-R: Rosedale Residence (Applicant) v. Service Employees Union, Local 204, Affiliated with A. F. of L. C.I.O., C.L.C. (Respondent) v. Peace Bridge Area Association for the Mentally Retarded (Intervener). (9 employees). (*Dismissed*).

0103-76-R: Emmerich Schwab, Michele Scarpelli, Vincenzo Belsito, George Voutianitis, Antonio Gallo, Marty Meulendyk, Brian C. Roberts, Antonio Altomari, Fiore Belsito, Salvatore Belsito and George Panagiotakopoulos (Applicants) v. United Brotherhood of Carpenters and Joiners of America, Local 1190 (Respondent) v. Millicent Construction Ltd. (Intervener). (12 employees). (*Dismissed*).

0114-76-R: Millicent Construction Ltd. (Applicant) v. United Brotherhood of Carpenters and Joiners of America, Local 1190 (Respondent). (12 employees). (*Granted*).

0207-76-R: Empire Bentwood Industries Ltd. (Genwood Industries Ltd.) (Applicant) v. International Woodworkers of America (Respondent). (25 employees). (*Withdrawn*).

0232-76-R: United Brotherhood of Carpenters & Joiners of America Local 2486 (Applicant) v. Labourers' International Union of North America Local 493 (Respondent). (11 employees). (*Withdrawn*).

0281-76-R: Ralph Ford Electrical Contractors Limited (Applicant) v. International Brotherhood of Electrical Workers, Local 804 (Respondent). (no employees).

APPLICATION FOR DECLARATION OF SUCCESSOR STATUS

1874-75-R: Local Union No. 304, Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers, formerly known as Local Union No. 304, International Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers of America - C.L.C. (Applicant) v. Canadian Mist Distillers Limited (Respondent). (*Granted*).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL

0096-76-U: Canadian Industries Limited (Applicant) v. United Steelworkers of America, on its own behalf and on behalf of Local 13328 and William Jukes, Norman Ellis, Peter Burgess, James Dinsdale and James Nikolaou, on their own behalf and in their capacity as members of the Executive Committee of Local 13328, and Cecil Wilton on his own behalf and in his capacity as staff representative of the United Steelworkers of America (Respondents). (*Withdrawn*).

0112-76-U: The Essex County Roman Catholic Separate School Board (Applicant) v. Canadian Union of Public Employees and its Local Union 1358 – Technicians Unit, and Margaret Villamizar, Stephen Henri, Andrea Pinto, Rev. Fr. Douglas Mercer, Patricia Devaney, Leonard Gignac Clarice Fallet, and Marie Dinham (Respondents). (*Direction*).

0176-76-U: The Lummus Company Canada Limited (Applicant) v. R. Milson et al (Respondents). (*Withdrawn*).

0306-76-U: The Hydro-Electric Commission of The City of Sudbury (Applicant) v. Local 1052 of the Canadian Union of Public Employees, C.L.C., G. Deault, S. Antonio, et al (Respondents). (*Withdrawn*).

APPLICATIONS FOR CONSENT TO PROSECUTE

1498-75-U: Labourers' International Union of North America, Local 183 (Applicant) v. Runnymede Development Corporation Limited (Respondent). (*Withdrawn*).

0016-76-U: Addressograph-Multigraph Field Employees' Association (Applicant) v. Addressograph-Multigraph of Canada Limited (Respondent). (*Withdrawn*).

1058-76-U: Horton CBI, Limited (Applicant) v. Edward Baker, et al (Respondents). (*Withdrawn*).

0160-76-U: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. The Jedwood Corporation and Brian M. Tourangeau (Respondent). (*Withdrawn*).

0166-76-U: The Essex County Roman Catholic Separate School Board (Applicant) v. Service Employees' Union – Local 210 (Affiliated with Service Employees' International Union) AFL-CIO-CLC and Anthony E. Borg, Randy Reaume, William Jackson and Raymond Bosse (Respondents). (*Withdrawn*).

COMPLAINTS UNDER SECTION 79 (UNFAIR LABOUR PRACTICE)

1499-75-U: Labourers' International Union of North America, Local 183 (Complainant) v. Runnymede Development Corporation Limited (Respondent). (*Withdrawn*).

1679-75-U: Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local 880, (affiliated with the International Brotherhood of Teamsters etc.) (Complainant) v. Coulter & Sons (Windsor) Ltd. (Respondent). (*Granted*).

1725-75-U: United Steelworkers of America on behalf of Local 13704 (Complainant) v. Canadian Industries Limited (Respondent).

1927-75-U: Upholsterers International Union of North America AFL/CIO (Complainant) v. Craft-line Industries Ltd. (Respondent). (*Withdrawn*).

0070-76-U: Peter Vannoord (Complainant) v. International Harvester Co. of Canada, Ltd. (Respondent). (*Withdrawn*).

0084-76-U: Ontario Nurses' Association (Complainant) v. Glengarry Memorial Hospital (Respondent). (*Withdrawn*).

0130-76-U: Canadian Union of Operating Engineers, Local 101 (Complainant) v. Olympia & York Developments Limited (Respondent). (*Dismissed*).

0148-76-U: Antonio Melillo (Complainant) v. Barber Coleman of Canada Ltd. (Respondent). (*Terminated*).

0153-76-U: Local Union 800 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Complainant) v. I. B. Mechanical & Electrical Co. (Respondent). (*Withdrawn*).

0165-76-U: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Complainant) v. Funcraft Vehicles Limited (Respondent). (*Withdrawn*).

0180-76-U: Toronto Typographical Union No. 91 (Complainant) v. C C H Canadian Limited (Respondent). (*Withdrawn*).

0182-76-U: Labourers' International Union of North America, Local 183 (Complainant) v. Towergate Corporation Limited (Glenway Builders Ltd.) (Respondent). (*Withdrawn*).

0193-76-U: Eva Lanctot (Complainant) v. Division 946 Amalgamated Transit Union (Respondent). (*Withdrawn*).

1244-76-U: George Edmondson (Complainant) v. Sheet Metal Workers International Association Local Union 504 (Respondent). (*Withdrawn*).

0268-76-U: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union 527 and Louis Holztrager (Complainant) v. Keith Reinhardt Mechanical, Division of One Step Holdings Ltd. (Respondent). (*Withdrawn*).

0287-76-U: International Ladies' Garment Workers Union (Complainant) v. Di Pilla Leather Fashions (Respondent). (*Withdrawn*).

0297-76-U: Teamsters, Chauffeurs, Warehousemen and Helpers Local 880 Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Complainant) v. Coulter & Sons (Windsor) Ltd. (Respondent). (*Withdrawn*).

0307-76-U: Lillian E. Peppard (Complainant) v. Christian Trade Union and St. Alger Nursing Home (Respondents). (*Withdrawn*).

APPLICATION UNDER SECTION 39

1821-75-M: M. Paris (Applicant) v. Carleton University Academic Staff Association (Respondent Trade Union) v. Carleton University (Respondent Employer). (*Granted*).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

0131-76-M: The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, Local 27, U.A.W.-A.F.L.-C.I.O. (Trade Union) v. Central Chevrolet Oldsmobile (London) Limited (Employer).

0226-76-M: Amalgamated Clothing Workers of America, CLC-AFL-CIO (Trade Union) v. Work Wear Corporation of Canada Ltd., formerly Nu-Way Laundry Limited (Employer). (*Granted*).

APPLICATION UNDER SECTION 55

0203-76-R: Canadian Union of Public Employees, and its Local 1653 (Applicant) v. The Port Hope and District Hospital (Respondent) v. VS Services Ltd. (Intervener). (*Withdrawn*).

APPLICATION UNDER SECTION 76 (FINANCIAL STATEMENT REQUESTED BY TRADE UNION MEMBER).

0046-76-M: Arnold Marsman (Complainant) v. D. Hayman (Respondent). (*Withdrawn*).

JURISDICTIONAL DISPUTES

0911-75-JD: Adam Clark Company Limited (Complainant) v. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada Local Union No. 46; International Union of Operating Engineers, Local 793 (Respondents).

1733-75-JD: The Ontario Precast Concrete Manufacturers' Association on behalf of Artex Precast Limited (Complainant) v. Local Union No. 38, United Brotherhood of Carpenters and Joiners of America, and Labourers' International Union of North America, Ontario Provincial District Council, by and on behalf of Locals 506 and 837, and Poole Construction Limited (Respondents).

0099-76-JD: International Brotherhood of Electrical Workers Local Union 353 (Complainant) v. Day Signs Limited and International Brotherhood of Painters and Allied Trades, Local 1630 (Respondents). (*Direction*).

APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2)

1531-75-M: The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, U.A.W. (Office Unit) (Applicant) v. Canadian Trailmobile Limited (Respondent). (*Granted*).

1549-75-M: Office and Professional Employees' International Union, Local 225 (Applicant) v. The Letter Carriers' Union of Canada (Respondent). (*Granted*).

1712-75-M: Canadian Union of Public Employees, Local Union No. 101 (Applicant) v. The Corporation of the City of London (Respondent). (*Granted*).

REFERENCE TO BOARD PURSUANT TO SECTION 96

1360-75-M: Arcan Eastern Limited (Employer) v. International Association of Bridge, Structural and Ornamental Ironworkers, Local Union 721 (Trade Union). (*Dismissed*).

APPLICATIONS UNDER SECTION 112a

1779-75-M: International Union of Operating Engineers, Local 793 (Applicant) v. Arlington Crane Service Ltd. (Respondent). (*Granted*).

1813-75-M: Labourers International Union Local 1081 (Applicant) v. Riverside Construction (R. C. Prueffer Co. Limited) (Respondent). (*Withdrawn*).

0104-76-M: Labourers' International Union of North America, Local 183 (Applicant) v. Warren Bitulithic Limited (Respondent). (*Withdrawn*).

0110-76-M: International Union of Operating Engineers, Local 793 (Applicant) v. Boon's Crane Service Ltd. (Respondent). (*Withdrawn*).

0156-76-M: Horton CBI. Limited (Applicant) v. International Brotherhood of Boilermakers, Iron Shipbuilders, Blacksmiths, Forgers and Helpers (Respondent). (*Withdrawn*).

0204-76-M: Labourers' International Union of North America, Local Union 837 and Labourers' International Union of North America, Ontario Provincial District Council on behalf of Local Union 837 (Applicants) v. Stewart & Hinan Contractors Limited, General Contractors Association of Niagara and Niagara Construction Association (Respondents). (*Terminated*).

0205-76-M: Labourers' International Union of North America, Local Union 837 and Labourers' International Union of North America, Ontario Provincial District Council on behalf of Local Union 837 (Applicants) v. Stewart & Hinan Contractors Limited (Respondent). (*Terminated*).

0269-76-M: United Brotherhood of Carpenters & Joiners of America, Local Union 18 (Applicant) v. Stewart & Hinan Contractors Limited (Respondent). (*Withdrawn*).

0321-76-M: Labourers' International Union of North America, Local 527 (Applicant) v. Joe Arban Contracting Limited (Respondent). (*Withdrawn*).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

1291-75-U: Warehousemen and Miscellaneous Drivers Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Complainant) v. F. W. Woolworth Co. Ltd. (Respondent).

- and -

1292-75-U: Warehousemen and Miscellaneous Drivers Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Complainant) v. F. W. Woolworth Co. Ltd. (Respondent).

- and -

1293-75-U: Warehousemen and Miscellaneous Drivers Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Complainant) v. F. W. Woolworth Co. Ltd. (Respondent).

- and -

1294-75-U: Warehousemen and Miscellaneous Drivers Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Complainant) v. F. W. Woolworth Co. Ltd. (Respondent).

- and -

1334-75-U: Warehousemen and Miscellaneous Drivers Local Union No. 419 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Complainant) v. F. W. Woolworth Co. Ltd. (Respondent). (*Section 79*). (*Request Denied*).

1535-75-U: Local Union 2345 International Brotherhood of Electrical Workers, AFL CIO CLC (Complainant) v. Onward Manufacturing Company Limited (Respondent). (*Request Denied*).

1536-75-U: Local 2345 International Brotherhood of Electrical Workers, AFL CIO CLC (Complainant) v. Onward Manufacturing Company Limited (Respondent). (*Section 79*). (*Request Denied*).



Labour
Relations Board

Decisions June 76

Government
Public

20NLR

Q54



LIBRAR.

OCT 1976

UNIVERSITY OF TORO

ONTARIO LABOUR RELATIONS BOARD

Chairman D.D. CARTER

Alternate Chairman RORY F. EGAN

Vice-Chairmen F.V. BOSCARIOL
K.M. BURKETT
G.S.P. FERGUSON, Q.C.
R.A. FURNESS
D.H. KATES
I.C.A. SPRINGATE

Members H.J.F. ADE
D.B. ARCHER
J.D. BELL
E. BOYER
F. KEEN
A. GRIBBEN
L. HEMSWORTH
A. HERSHKOVITZ
O. HODGES
F.W. MURRAY
P.J. O'KEEFFE
J.E.C. ROBINSON, Q.C.
N. SATTERFIELD
H. SIMON
R. WHITE
W.H. WIGHTMAN

Executive Assistant to the Chairman S.D. SAXE *Registrar* A.M. BRUNSKILL

Solicitor R.O. MACDOWELL

Editor, Monthly Report S.D. SAXE

**NOTICE TO PARTIES APPEARING BEFORE THE BOARD ON COMPLAINTS
WHERE SUBSECTION 4a OF SECTION 79 APPLIES**

Parties to a complaint to which section 79 (4a) applies are advised that the Board's standard practice at a Board hearing of such complaint will be to have the respondent proceed first.*

*Your attention is directed to Rule 47 of the Board's Rules of Procedure, which provides (in part):

47.-(1) Where a person intends to allege, at the hearing of an application or complaint, improper or irregular conduct by any person, he shall,

(a) include in the application or complaint; or

(b) file a notice of intention that shall contain,

a concise statement of the material facts, actions and omissions upon which he intends to rely as constituting such improper or irregular conduct, including the time when and the place where the actions or omissions complained of occurred and the names of the persons who engaged in or committed them, but not the evidence by which the material facts, actions or omissions are to be proved, and, where he alleges that the improper or irregular conduct constitutes a violation of any provision of the Act, he shall include a reference to the section or sections of the Act containing such provision.

(4) No person shall adduce evidence at the hearing of an application or complaint of any material fact that has not been included in the application or complaint or in any document filed under these Rules in respect of the application or complaint, except with the consent of the Board and, if the Board considers it advisable to give such consent, it may do so upon such terms and conditions as it considers advisable.

Where sufficient particulars are not provided, the Board may, among other things, dismiss the complaint, order the particulars supplied and adjourn, order the party who has not supplied the particulars to do so at the hearing.

**ONTARIO
LABOUR RELATIONS BOARD
REPORTS**

**A Monthly Series of Decisions from the
Ontario Labour Relations Board**

Cited [1976] OLRB REP.

CASES REPORTED

Amis, A. Frank, Bus. Agent L 598 (& Charles W. Irvine, Int'l Vice-President) Re Saverio A. Greco Cement Finisher L 598	323
Hodgson's Steel & Ironworks Ltd. Re USA And Group of Employees	312
Hotel & Club Employees' U L 299, Tor., aff'l with The Hotel & Restaurant Employees & Bartenders' Int'l U., AFL-CIO-CLC Re David Matthews	283
Inglis Ltd. Re UAW	270
King Paving & Materials Div. of the Flintkote Co. of Canada Ltd. And Teamsters L U 879 aff'l with TCWH & Leonard O. Schultz, bus. rep., Teamsters, L 879	291
New Strathcona Hotel (Tor.) Ltd. – Berkeley Savoy Hotel Re Hotels, Clubs, Restaurants, Tavern Employees' U L 261 And Group of Employees	308
Pop Shoppe (Tor.) Ltd. Re Teamsters U L 1000	294
Pop Shoppe (Tor.) Ltd. Re Teamsters U L 1000	299
St. Catharines Bldg. Supplies Ltd. Re Teamsters L 879 aff'l with TCWH And Group of Employees	321
St. Josephs Hospital (Guelph) & the Hospitals Listed in Appendix "A" v. Thomas Edwards, Emma Pryor, Elisabeth Brokmann, Frank Rochetta, Minerva McCauley, Michael Deveau, Carol E. Dufresne, Harold Wrightman, B. Drane and Pat Kenny and Canadian Union of Public Employees and its Local Unions Listed in Appendix "B"	255
Sovereign Insulation Canada Ltd. Re The Int'l Assoc. of Heat & Frost Insulators & Asbestos Workers, L 95	304
Unifin Div. of Keeprite Pro. Ltd. And R.F. Nickerson, on his own behalf & on behalf of UAW & L 27	286

INDEX OF CASES

- Arbitration – Discharge – Whether employer has onus to show just cause – Whether union officer's absence from work while attempting to end an illegal strike just cause.
 THE INTERNATIONAL ASSOCIATION OF HEAT AND FROST INSULATORS AND ASBESTOS WORKERS, LOCAL 95 v. SOVEREIGN INSULATION CANADA LIMITED 304
- Collective Agreement – Strike – Whether term in collective agreement that employer would not require employees to cross a legal picket line provides an exception to the Act's strike prohibitions.
 KING PAVING AND MATERIALS DIVISION OF THE FLINTKOTE COMPANY OF CANADA LIMITED v. TEAMSTERS LOCAL UNION, NO. 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AND LEONARD O. SCHULTZ, BUSINESS REPRESENTATIVE, TEAMSTERS, LOCAL NO. 879 291
- Collective Agreement – Whether Memorandum of Agreement a Collective Agreement – Effect of Employer not having ratified Agreement – Effect of Employer awaiting approval of Anti-Inflation Board – Effect of implementation by employer of certain of the agreed changes – Whether written ratification required.
 UNIFIN DIVISION OF KEEPRITE PRODUCTS LIMITED v. R.F. NICKERSON, ON HIS OWN BEHALF AND ON BEHALF OF THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (U.A.W.) AND ITS LOCAL 27 AND THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, (U.A.W.) AND ITS LOCAL 27 286
- Discharge For Union Activity – Effect of finding both just cause and anti-union motivation – Effect of previous finding of anti-union motivation in related case – Effect of company changing its response to employee discipline following application for certification.
 TEAMSTERS UNION LOCAL 1000 v. POP SHOPPE (TORONTO) LIMITED .. 299
- Discharge For Union Activity – Whether technological changes reason for layoffs – Effect of recall offer to heavier job.
 TEAMSTERS UNION LOCAL 1000 v. POP SHOPPE (TORONTO) LIMITED .. 294
- Duty to Bargain in Good Faith – Strike – S82 – *The Hospital Labour Disputes Arbitration Act*, S8(1), S8(2) – Whether Board will consider employer's bargaining conduct when exercising its discretion under S82 – Whether Board to consider Public Interest in Hospital cases – Whether Board may constitutionally issue cease and desist orders – Whether order may issue to officers and agents under terms of *The Hospital Labour Disputes Arbitration Act* – S14 – Whether the employer must engage in full and open discussion on underlying wage policy issues – Effect of not providing communication lines for union's point of view to reach ultimate decision makers.

ST. JOSEPHS HOSPITAL (GUELPH) AND THE HOSPITALS LISTED IN APPENDIX "A" v. THOMAS EDWARDS, EMMA PRYOR, ELISABETH BROKMANN, FRANK ROCHETTA, MINERVA MCCAULEY, MICHAEL DEVEAULT, CAROL E. DUFRESNE, HAROLD WRIGHTMAN, B. DRANE AND PAT KENNY <i>and</i> CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL UNIONS LISTED IN APPENDIX "B"	255
Duty of Fair Representation – Whether President of Local Union must consult with negotiating committee before modifying union's position in bargaining. DAVID MATTHEWS v. THE HOTEL AND CLUB EMPLOYEES' UNION LOCAL 299, TORONTO, AFFILIATED WITH THE HOTEL AND RESTAURANT EMPLOYEES AND BARTENDERS' INTERNATIONAL UNION, AFL-CIO-CLC	283
Employees – S1(3)(b) – Underlying purpose of section and tests used in applying it – Whether Buyers, Customs Agents, Process Engineers, Product Engineers, Time Study Analysts are excluded. INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW) v. INGLIS LIMITED	270
Employees – S1(3)(b) – Whether <i>de facto</i> office manager excluded – Whether chief buyer excluded – Whether expediter excluded – Effect of employees being related to management – Effect of corporate information return filed with government listing disputed employee as a director – S6(3) – Whether professional engineer employed as an estimator is employed in a professional capacity. UNITED STEELWORKERS OF AMERICA v. HODGSON'S STEEL & IRONWORKS LIMITED v. GROUP OF EMPLOYEES	312
Petition – Effect of Board's requirements regarding Petitions (Dissenting Decision). HOTELS, CLUBS, RESTAURANTS, TAVERN EMPLOYEES' UNION LOCAL 261 v. NEW STRATHCONA HOTEL (TORONTO) LTD. – BERKELEY SAVOY HOTEL v. GROUP OF EMPLOYEES	283
Petition – Effect of father of petitioner not testifying where he played a role in the origination of the petition. TEAMSTERS LOCAL 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA v. ST. CATHARINES BUILDING SUPPLIES LIMITED v. GROUP OF EMPLOYEES	321
S61 – Whether trade union officials sought by intimidation or coercion to compel complainant to cease union activity or membership – Whether case should be heard by the Board or left to be dealt with by internal union procedures – Whether S61 complaint may be brought against a trade union – Whether actual intimidation or coercion must occur. SAVERIO A. GRECO CEMENT FINISHER LOCAL 598 v. A. FRANK AMIS BUSINESS AGENT LOCAL 598 (AND CHARLES W. IRVINE, INTERNATIONAL VICE-PRESIDENT)	323

Strike – Collective Agreement – Whether term in collective agreement that employer would not require employees to cross a legal picket line provides an exception to the Act's strike prohibitions.

KING PAVING AND MATERIALS DIVISION OF THE FLINTKOTE COMPANY OF CANADA LIMITED v. TEAMSTERS LOCAL UNION, NO. 879 AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AND LEONARD O. SCHULTZ, BUSINESS REPRESENTATIVE, TEAMSTERS, LOCAL NO. 879

291

Strike – Duty to Bargain in Good Faith – S82 – *The Hospital Labour Disputes Arbitration Act*, S8(1) – S8(2) – Whether Board will consider employer's bargaining conduct when exercising its discretion under S82 – Whether Board to consider Public Interest in Hospital cases – Whether Board may constitutionally issue cease and desist orders – Whether order may issue to officers and agent under terms of *The Hospital Labour Disputes Arbitration Act* – S14 – Whether the employer must engage in full and open discussion on underlying wage policy issues – Effect of not providing communication lines for union's point of view to reach ultimate decision makers.

ST. JOSEPHS HOSPITAL (GUELPH) AND THE HOSPITALS LISTED IN APPENDIX "A" v. THOMAS EDWARDS, EMMA PRYOR, ELISABETH BROKMANN, FRANK ROCHETTA, MINERVA MCCAULEY, MICHAEL DEVEAULT, CAROL E. DUFRESNE, HAROLD WRIGHTMAN, B. DRANE AND PAT KENNY and CANADIAN UNION OF PUBLIC EMPLOYEES AND ITS LOCAL UNIONS LISTED IN APPENDIX "B"

255

0381-76-U St. Josephs Hospital (Guelph) and the Hospitals Listed in Appendix "A", (Applicants), v. Thomas Edwards, Emma Pryor, Elisabeth Brokmann, Frank Rochetta, Minerva McCauley, Michael Deveau, Carol E. Dufresne, Harold Wrightman, B. Drane and Pat Kenny and Canadian Union of Public Employees and its Local Unions Listed in Appendix "B", (Respondents).

- and -

0414-76-U Canadian Union of Public Employees and its Local Unions Listed in Appendix "A", (Complainants), v. St. Joseph's Hospital (Guelph) and the Hospitals Listed in Appendix "B", (Respondents).

Strike – Duty to Bargain in Good Faith – S82 – *The Hospital Labour Disputes Arbitration Act*, S8(1) – S8(2) – Whether Board will consider employer's bargaining conduct when exercising its discretion under S82 – Whether Board to consider Public Interest in Hospital cases – Whether Board may constitutionally issue cease and desist orders – Whether order may issue to officers and agent under terms of *The Hospital Labour Disputes Arbitration Act* – S14 – Whether the employer must engage in full and open discussion on underlying wage policy issues – Effect of not providing communication lines for union's point of view to reach ultimate decision makers.

BEFORE: Kevin M. Burkett, Vice-Chairman and Board Members .D. Bell and E. Boyer.

APPEARANCES: *C.M. McKeown, Q.C., W.J. Whittaker, Q.C. and B. O'Byrne for the applicants in Board File No. 0381-76-U and the respondents in Board File No. 0414-76-U; Jeffrey Sack, Ted Edwards and Michael Mitchell for the respondents in Board file No. 0381-76-U and the complainants in Board File No. 0414-76-U; Doug Wray and Ms. Sales also appeared for CUPE Local 79.*

DECISION OF THE BOARD: June 16, 1976

1. The Board is dealing with a Section 82 application and a section 79 complaint which have been consolidated by the Board in a decision dated June 4, 1976. The 59 hospitals who are the section 82 applicants seek a declaration from the Board that certain persons purported to be officers, officials or agents of the trade union and the trade union and its locals threatened an unlawful strike in contravention of section 8 of the Hospital Labour Disputes Arbitration Act and request that the Board make certain directions as outlined in Appendix "D" of the application. The respondents to the section 82 application raised a defence of bad faith bargaining by the hospitals in the reply and filed a separate complaint under section 79 of The Labour Relations Act alleging that the hospitals have violated section 14 of The Labour Relations Act.

2. Counsel for the trade union made an impassioned plea that the Board deal with both matters in a single decision. He argued that the approach would best facilitate the bargaining process which is scheduled to resume today, June 15, 1976. The Board has some sympathy with these representations and will render a decision in respect of both matters. The Board would point out, however, that although the two proceedings are inextricably interwoven the considerations of the Board with respect to each are different. The issue of Board discretion under section 82 as it might be affected by the defence of bad faith bar-

gaining is an issue distinct and apart from the substantive matter of bad faith bargaining in and of itself. For this reason the Board will deal firstly with the section 82 application and then it will consider the section 79 complaint. The Board would also point out at this juncture that because of the pressing time factor its recitation of the evidence and argument and the reasoning in support of its findings will be of a more summary nature than would otherwise be the case.

3. It was agreed that the Canadian Union of Public Employees and its named locals hold bargaining rights in respect of certain employees of the applicant hospitals who are hospitals within the meaning of The Hospital Labour Disputes Arbitration Act. It was further agreed that the named respondents in the section 82 application, other than Thomas Edwards, Harold Wrightman and B. Drane are employees of one or other of the applicant hospitals. The Board took judicial note of the "Toronto settlement" arrived at by the Canadian Union of Public Employees and a number of Toronto area hospitals in 1974 in the *Norfolk Hospital* case [1974] OLRB Rep. Sept. 581 and stated at page 588:

"Briefly stated, the Toronto Hospital settlement was concluded in the face of a strike threat by the affected employees and their bargaining agent – *a threat that was contrary to the law* but which led to a settlement which provided substantial monetary gains for the affected employees" (emphasis added). Indeed, the Board in this case takes judicial note not only of the 1974 Toronto scenario but also the union's public opposition to the use of arbitration as a final dispute settlement mechanism.

4. The evidence establishes that as early as June, 1975 Mr. T. Edwards, a national representative of the Canadian Union of Public Employees, the co-ordinator for health care workers represented by the union in Ontario, and in addition the spokesman and chairman of the union's central bargaining committee for service employees, commenced making public pronouncements through the press to the effect that a failure to obtain a negotiated settlement would lead to a strike despite the legislation prohibiting strikes by hospital employees. These pronouncements continued through May of 1976. The evidence further establishes that on April 30, 1976 at a joint negotiating session at the Sheraton Connaught Hotel in Hamilton Mr. Edwards as chairman of the union's negotiating committee laid down an ultimatum to the hospital committee wherein he gave the hospitals five days to give a satisfactory reply to the union's counter-proposal or he would go to the people and ask if they considered a strike necessary to achieve the desired benefits. He reiterated that the union did not intend to go to arbitration. Again at a joint bargaining session on May 14, 1976 at the Skyline Hotel in Toronto he made reference to a strike deadline of June 17, 1976. In the early part of May bulletins were circulated and the evidence establishes were posted at both the Ottawa Civic Hospital and the Guelph General Hospital. The bulletins read as follows:

" HELP YOURSELF TO BETTER CARE.

Very shortly hospital workers across Ontario will be asked to endorse the provincial bargaining committee's call for a June 17th strike.

This decision was reached after months of frustrating negotiations. It is now time for action.

Since the start of negotiations last November, hospital management attempted to destroy province-wide negotiations. We must not let that happen. We fought long and hard to reach the day when all hospital workers could negotiate at one bargaining table. Hospital management and the provincial government would like nothing better than to see us give up the fight.

The only way to demonstrate our anger is by showing that we fully support our bargaining committee's decision.

Our wage proposal of \$170 a month will allow us to retain the wage differential with nurses. That's not too much to ask. And yet management has offered \$60 a month – take it or leave it.

We want improved vacations. But management's response has been completely negative. We're asking for standardized sick leave in all locals. Management says no. We're requesting a job security package. They say: no change.

Hospital workers are not going to be scapegoats for government inefficiency.

It is time to fight back.

Help your negotiating committee and yourself.

SUPPORT THE JUNE 17TH CALL FOR ACTION Canadian Union of Public Employees ”

During this period of time Mr. Edwards was broadcasting recorded messages over a C.U.P.E. province wide telephone hook-up. These messages made reference to the impending strike, the required preparations and the conducting of strike votes. Mr. Edwards when called to give evidence made no denial of these facts and to his credit substantiated a number of them. It was not denied that the “provincial bargaining committee” referred to consists of the named individual respondents in this application.

5. In early January of 1975 the Report of the Hospital Inquiry Commission, hereinafter referred to as the Johnston Report was released. The Johnston Report dealt with, among other things, the structure of bargaining in the Hospital sector and the criteria for arbitration awards in that sector. It recommended that hospital bargaining units be rationalized into three groupings, service (including clerical), nursing and para-medical, and among its other recommendations proposed that province wide bargaining on central issues be realized as quickly as possible for the nursing and para-medical groups and that in respect of service employees the parties be encouraged to take a “step by step” approach to province wide bargaining on central issues commencing with the interim step of regional bargaining. The Report states that “central bargaining should not be forced upon parties...” The union wrote to The Ontario Hospital Association on January 22, 1975 with respect to its decision to commence discussions relating to the implementation of the Johnston Report recommendations and commenced to organize meetings of its hospital employee representatives for the purpose of ascertaining the union's position on these matters.

6. The evidence establishes that the parties encountered considerable difficulty in arriving at mutually agreeable procedures under which a form of centralized bargaining would be undertaken. These difficulties centered on:

- (i) a determination of the subject matter which would be considered appropriate for central bargaining discussion as opposed to that which would be appropriate for local bargaining discussion;
- (ii) a determination of the mechanics of establishing province wide bargaining for the C.U.P.E. para-medical group who were for the most part members of composite service employee locals;
- (iii) a determination of the appropriate forum for consideration of bargaining issues as related to clerical employees who in large measure were also members of composite locals.

It was not until February 6, 1976 that a memorandum of agreement was signed which set out the agreement of the parties with respect to "conditions for joint bargaining." At a subsequent meeting on February 19, 1976 it was agreed by the parties that the para-medical group would join the service group there being insufficient time prior to the parties March 1, 1976 deadline to resolve the difficulties attendant with establishing province wide bargaining for the para-medics as a separate group. It was agreed that the para-medics would have representation at the central bargaining table and that their proposals would be given "consideration."

7. Although the parties had exchanged central bargaining proposals on or about October 31, 1975, discussion on those items did not commence until early March, 1976 because of the procedural problems outlined above. At that time the union first defined its request for a "substantial" wage increase to be \$170 per month across the board wage increase, further defined its other monetary demands and made new demands for job security in light of the provincial close down of certain hospitals. Although the parties met on March 23, 24 and 25, 1976 these meetings were given to unresolved local issues. On April 8, 1976 the hospitals made its first comprehensive proposal on central issues. The parties subsequently met on April 19, 20 and 21, 1976 under the aegis of Mr. Speranzini who had been assigned as a mediator and once again concentrated on unresolved local issues. The union then requested a full proposition "in writing" from the hospitals and received on April 29, 1976 a document detailing local issues. Although there may have been a misunderstanding the union had been expecting a proposal on central issues and as a result was, in Mr. Edwards' words, "extremely upset." The union then caucused and proceeded to make certain alterations in its position and in addition demanded a written response from the hospitals on all items within five days. The five days elapsed with no exchange and on the sixth day Mr. Edwards called a press conference to announce that the union would be conducting strike votes.

8. The parties met again on May 14, 1976 under the aegis of Mr. Speranzini who had now been appointed a conciliation officer over the protest of the union. That evening Mr. McKeown, acting as spokesman for the hospitals, reiterated the monetary offer that had been tabled by the hospitals on April 8, 1976. The evidence establishes that Mr. McKeown in justifying what had been earlier referred to as the "total" package, made refe-

ence to government "constraints" in explaining that there was no more. Mr. Edwards then requested that the parties go hand in hand to the Ministry of Health to petition for more funds. The Hospital committee caucused for an hour and announced that the offer was "fair" as it stood. There was no indication of a willingness to jointly petition the Ministry of Health. The offer of the hospitals was a flat \$60 a month across the Board which ranged from 4% to 8% depending on category. Mr. McKeown stated, however, having regard to the total compensation offer, that because of the recent increase in OHIP premium the hospitals had probably exceeded its budgetary guidelines. Mr. R. Steward, the vice-chairman of the hospitals bargaining committee, acknowledged that the hospitals have been restricted to an 8% budget increase and other evidence was submitted which confirms this fact. At no time did either party engage in a full discussion of the rationale in support of their respective positions.

9. The Board would note at this point that the Johnston Report stated in reference to hospital bargaining:

"However, with the advent of a public programme of hospital insurance, the Province acting originally through the Ontario Hospital Services Commission (OHSC) and subsequently the Ministry of Health has acquired a wide range of responsibilities including arranging for the capital financing of hospitals and paying their approved operating costs. These roles have placed the Ministry in an important position in hospital industrial relations as it holds "the power of the purse." Ultimately, the Management Board of Cabinet of the Government of Ontario determines the amount of funds available to individual hospitals."

There have been past arbitration decisions which refer to the "ghost" at the bargaining table and the Board is prepared to take judicial notice of the facts asserted in the above excerpt from the Johnston Report. The Board would add at this point that although the evidence is unclear as to the precise impact of the Ministry of Health guidelines as they affect compensation, it is obvious that in a central province wide bargaining structure the blanket or "global" guidelines would have a more telling effect. Whereas in individual bargaining a hospital could conceivably make adjustments within its overall limit in order to accommodate a settlement that avenue is severely restricted in view of the fact that 59 hospitals are bargaining together. It would not be practical within the provincial context in view of the time constraints which face all bargaining parties as they move towards a resolution, to expect that 59 hospitals could juggle budgets in order to provide additional funds to settle a compensation package above the Ministry of Health guidelines. The Board will consider the effect of these restraints on the bargaining process when it deals with the union's section 79 complaint in detail.

10. Sections 8(1) and (2) of The Hospital Labour Disputes Arbitration Act state:

"8. (1) Notwithstanding anything in The Labour Relations Act, no hospital employees to whom this Act applies shall strike and no employer of such employees shall lock them out.

(2) Sections 65 and 66, subsection 1 of section 67 and sections 68, 82, 83 and 84 of The Labour Relations Act as amended or re-enacted from

time to time apply mutatis mutandis under this Act as if such sections were enacted in and form part of this Act."

11. Section 82 of The Labour Relations Act states:

"Where, on the complaint of a trade union, council of trade unions, employer or employers' organization, the Board is satisfied that a trade union or council of trade unions called or authorized or threatened to call or authorize an unlawful strike or that an officer, official or agent of a trade union or council of trade unions counselled or procured or supported or encouraged an unlawful strike or threatened to engage in an unlawful strike, the Board may so declare and, in addition, in its discretion, it may direct what action if any a person, employee, employer, employers' organization, trade union or council of trade unions and their officers, officials or agents shall do or refrain from doing with respect to the unlawful strike or the threat of an unlawful strike."

12. The evidence clearly and unequivocally supports a finding that Mr. T. Edwards, a C.U.P.E. representative, co-ordinator of the union's health care bargaining units and chairman of its bargaining committee, threatened an unlawful strike in contravention of the Hospital Labour Disputes Arbitration Act. The Board must also find that the other members of the union's negotiating team were aware of Mr. Edwards' threats either as a result of having been present when they were made or through receipt or knowledge of the strike bulletin or by virtue of the recorded messages or by having read the press reports. It is trite to say that persons who appear at the bargaining table as properly constituted members of a bargaining committee, whether it be union or management, act as agents of their respective principals and are estopped from subsequently denying this fact. In the absence of evidence to establish that any individual member of the C.U.P.E. negotiating committee was not properly authorized to act in an agent capacity on behalf of C.U.P.E. and/or its named locals the Board finds that they were at the material times agents of the union and its named locals. None of these persons repudiated the threats made by Mr. Edwards nor did any of these persons attempt to extricate themselves from the course which was being pursued by Mr. Edwards. Their behaviour must be construed as a condonation of Mr. Edwards' conduct and as a result the Board is compelled to find that Emma Pryor, Elisabeth Brokmann, Frank Rochetta, Minerva McCauley, Michael Deveault, Carol Dufresne, Harold Wrightman, B. Drane and Pat Kenny also threatened an unlawful strike in contravention of The Hospital Labour Disputes Arbitration Act.

13. Having made these findings the Board must now address itself to the exercise of its discretion under section 82 of The Labour Relations Act. Counsel for the respondents argued that the Board should refrain from issuing a declaration and an order in this matter because of the bad faith bargaining of the employer which he argued precipitated the response of the union. He argued that the Board must view the matter in its labour relations context and in so doing should conclude that the bargaining conduct of the employer has served to make the employer the "author of its own misfortune." Without at this point making a finding with respect to the bargaining conduct of the employer the Board must state firstly that the union's strike threats preceded the commencement of bargaining and cannot, therefore, be construed as having been the result of bad faith bargaining.

14. The legislature has provided the Board with remedial powers in respect of bad faith bargaining. Indeed, Mr. Sack in his representations on behalf of the union commented on the effectiveness of the Board's present remedial powers in this regard. Surely the proper response to bad faith bargaining is an application brought under section 79 of the Act. Where an effective legal remedy exists the Board must look with a critical eye to unlawful conduct which bespeaks a philosophy of "self-help" and must be loathe to exercise its discretion in favour of such activity. "Self help" remedies ultimately result in general disregard for the law. In the circumstances of this case (and as borne out by the facts recounted in the *Norfolk Hospital* case (supra)) if such conduct is seen as an effective means of achieving one's objectives pressure will be brought to bear on other hospital sector bargaining agents to follow a similar course. It is not in the public interest nor is it in the best interests of labour relations that such a precedent be set.

15. Notwithstanding the above observations the Board in the circumstances of this case must exercise its discretion in accord with the prohibition as found in section 8 (1) of The Hospital Labour Disputes Arbitration Act. The strike prohibition which is contained in The Hospital Labour Disputes Arbitration Act is a blanket prohibition which forbids a strike by hospital employees or a lockout by hospital employers at any time. The strike prohibition in the hospital sector must be contrasted with that found in The Labour Relations Act. The prohibition in The Labour Relations Act is not a blanket prohibition but rather it extends for the term of a collective agreement and during the subsequent period until such time as 16 days have elapsed following the Minister's issuance of a "no board" letter. The underlying policy consideration in support of the strike prohibition as it appears in The Labour Relations Act is the desire to balance on the one hand the exercise of individual and collective rights and freedoms and on the other the maintenance of industrial stability. The strike is not illegal per se but rather its use is restricted to a particular point in time. The exercise of the Board's discretion in these matters as they arise out of The Labour Relations Act is in large measure determined by labour relations factors as they relate to the individual parties. (See *Acoustical Association Ontario* case [1975] OLRB Rep. July 539, *National Refractories Ltd.* case 63 CLLC 16, 276). In the matter before us, however, and indeed in any similar circumstances arising out of The Hospital Labour Disputes Arbitration Act, the Board's discretion must extend beyond the parties to the dispute. The legislature in enacting section 8 of The Hospital Labour Disputes Arbitration Act determined that in the public interest hospitals in the Province of Ontario should not be struck and that hospital employees should not be locked out. It follows, therefore, that the exercise of the Board's discretion in this matter must take account of the public interest as it might be affected by the threatened activity. The Board is compelled to assert that it cannot conceive of factors which would, in the circumstances of this case, cause it to exercise its discretion against granting a declaration and a direction. The threats if brought to fruition would result in a cessation of work by the "service" employees in some 59 hospitals. The public interest dictates that this not be allowed to happen. This Board subscribes to the reasoning set out in the *Norfolk Hospital Association* case [1974] OLRB Rep. Sept. 581 wherein the Board stated:

"However that may be, it is our duty, as we see it, as the tribunal seized with the primary responsibility for administering the *Labour Relations Act* and portions of the *Hospital Labour Disputes Arbitration Act*, to re-affirm the law as laid down in those two statutes. The criteria for exercising our discretion in applications of this sort, as set out in the *National Refractories Ltd.* case *supra* will no doubt continue to be appropriate in most circumstances. How-

ever, where, as here, there is a deliberate sustained effort to flout the law: not only at the Norfolk hospital, but elsewhere across the province. we believe it to be our responsibility to so declare. To fail to do so might be construed, at worst, as a condonation of illegal conduct, or at the very least, as an abdication of our public responsibility."

In conclusion the Board, without at this point having put its mind to the bargaining behaviour of the parties, has decided that it should issue a declaration and a direction in respect of the threatened unlawful strike.

16. Having decided that we are compelled to exercise our discretion in favour of issuing a declaration and a direction, the Board must address itself to the arguments raised by Mr. Sack with respect to the constitutional jurisdiction of the Board to issue cease and desist orders and with respect to the statutory jurisdiction of the Board under the Hospital Labour Disputes Arbitration Act to issue cease and desist orders against officials, officers and agents. Dealing first with the constitutional argument, the respondents argue that the Ontario Legislature lacks constitutional authority to invest this Board with the power to issue a cease and desist order in the nature of a mandatory injunction. In our view this issue has been resolved by the recent decision of the Supreme Court of Canada in *Tomko v Labour Relations Board (Nova Scotia) et al* 76 CLLC 14,005. We have carefully read that case and find that any differences between the legislative context in *Tomko* and that of the situation before us are of no legal significance. Indeed the Court recognizes that a Board might be moved by policy considerations quite different from those of a court. At page 14,225 the court said:

"The fluidity and the volatility of labour relations issues must be counted as weighing heavily with the Legislature in providing this alternative means of seeking an accommodation between employers and trade unions under the superintendence of the Board or its special division and with the assistance of the Department of Labour, an accommodation that puts to one side the alternative routes of prosecution and Court injunction. The policy considerations are evident, and in pursuit thereof the mechanism of a cease and desist order to restore the lawful status quo ante seems to me to be a rational way of dealing administratively with a rupture of peaceful labour relations.

• • •

The scope of superintendence by the Legislature, through an administrative agency, of the initiation and continuation of collective bargaining relations between employers and trade unions without rupture has been considerably increased, and this monitoring of the quality of those relations has necessitated the introduction of new methods for control and vindication of the policies of the legislation. It has involved the adaptation to the legislative and administrative regime of remedies that in another, more individualistic, context had been evolved and are still being exercised by the ordinary Courts. That, however, does not necessarily make them impermissible for exercise by the administrative agencies as violative of s. 96 of the British North America Act."

With respect, it appears to us that the court was acknowledging the very kind of policy consideration which is present in the case before us and in our view we would be declining our proper jurisdiction and abrogating our responsibility if we refused to act despite our finding of an unlawful strike threat.

17. Mr. Sack also argued that even if the evidence indicates that the officers, officials or agents of the union threatened an unlawful strike, this Board has no jurisdiction to order them to refrain from such activity. This conclusion is said to follow from a close reading of section 8 of The Hospital Labour Disputes Arbitration Act as set out in paragraph 10 hereof and section 2 of the said Act as set out hereunder:

“2. (1) This Act applies to any hospital employees to whom The Labour Relations Act applies, to the trade unions that act or purport to act for or on behalf of any such employees, and to the employers of such employees.

(2) Except as modified by this Act The Labour Relations Act, applies to any hospital employees to whom this Act applies, to the trade unions that act or purport to act for or on behalf of any such employees, and to the employers of such employees.”

18. Counsel contends that because section 2(1) does not specifically refer to “officers, officials or agents” of the trade union, The Hospital Labour Disputes Arbitration Act can have no application to them. Therefore, it is argued that the sections of The Labour Relations Act which are incorporated into The Hospital Labour Disputes Arbitration Act by section 8(2) must be read and construed so as not to apply to officers, officials or agents of the trade union. Presumably, since there is no reference to employers’ organizations, and officers, officials or agents of the employer, the Board is likewise powerless to deal with unlawful conduct by those persons. It is perhaps useful, for the purpose of clarity, to set out in full the relevant sections of The Labour Relations Act which are incorporated by reference into The Hospital Labour Disputes Arbitration Act. These are as follows:

“65. No trade union or council of trade unions shall call or authorize or threaten to call or authorize an unlawful strike and *no officer, official or agent of a trade union or council of trade unions shall counsel, procure, support or encourage an unlawful strike or threaten an unlawful strike.*

66. No employer or *employers’ organization* shall call or authorize or threaten to call or authorize an unlawful lock-out and *no officer, official or agent of an employer or employers’ organization shall counsel, procure, support or encourage an unlawful lock-out or threaten an unlawful lock-out.*

67. (1) No person shall do any act if he knows or ought to know that, as a probable and reasonable consequence of the act, another person or persons will engage in an unlawful strike or an unlawful lock-out.

82. Where, on the complaint of a trade union, council of trade unions, employer or *employers’ organization*, the Board is satisfied that a trade union or council of trade unions called or authorized or threatened to call or author-

ize an unlawful strike or *that an officer, official or agent of a trade union or council of trade unions counselled or procured or supported or encouraged an unlawful strike or threatened to engage in an unlawful strike* or that employees engaged in or threatened to engage in an unlawful strike, the Board may so declare and, in addition, in its discretion, it may direct what action if any a person, employee, employer, employers' organization, trade union or council of trade unions and their officers, officials or agents shall do or refrain from doing with respect to the unlawful strike or the threat of an unlawful strike.

83. Where, on the complaint of a trade union, council of trade unions, employer or *employers' organization*, the Board is satisfied that an employer or employers organization called or authorized or threatened to call or authorize an unlawful lock-out or locked out or threatened to lock out employees or that an *officer, official or agent of an employer or employers' organization* counselled or procured or supported or encouraged an unlawful lock-out or threatened an unlawful lock-out, the Board may so declare and, in addition, in its discretion, it may direct what action if any a person, employee, employer, *employers' organization*, trade union or council of trade unions *and their officers, officials or agents* shall do or refrain from doing with respect to the unlawful lock-out or the threat of an unlawful lock-out."

(emphasis added)

The thrust of Mr. Sack's argument is that when these sections are read with section 2 of The Hospital Labour Disputes Arbitration Act, and incorporated "*mutatis mutandis*" all reference to "officers, officials or agents" of the trade union must be deleted. This interpretation results in the removal of a number of substantive prohibitions from the Act and substantially restricts the Board's remedial authority in respect thereto. In effect, when incorporating the named sections of The Labour Relations Act, one must disregard all parts of those sections which proscribe illegal conduct by officers, officials and agents of the trade union or employer. Likewise, one must disregard the remedy which appears to be expressly intended to restrain such unlawful conduct. One must therefore read the incorporated sections set out above as if all the underlined sections were missing. These are not "necessary changes in points of detail" but rather amount to a major revision of the statutory scheme, and we do not believe changes of this magnitude were envisaged by use of the term "*mutatis mutandis*."

19. The Ontario Labour Relations Act as modified and supplemented by The Hospital Labour Disputes Arbitration Act provides a code of conduct for collective bargaining in the Ontario "hospital sector." The general scheme of rights, obligations and procedures is similar to that set out in The Labour Relations Act, and, indeed many sections of that Act are incorporated without modification. However, there is one crucial difference: There is an *absolute prohibition* against strikes or lockouts, and differences must be resolved by binding arbitration. Presumably the illegality and heavy penalties attaching to all strikes and lockouts in the hospital sector reflect a legislative judgment as to the essential nature of the services which this industry provides. In any event, it would be an odd result if the threat of a strike by employees or "the union" was illegal, but the same threat by the officials of the union was not. Moreover, it is difficult to see how the union as an entity, can "call, threaten, or authorize an unlawful strike" except through the officers, officials and agents, who are elected to speak for it and carry out its bargaining functions. If their conduct cannot be restrained, it is also difficult to see how this Board can make an effective order against the

trade union, and it is to be noted that counsel has not questioned the Board's powers in this regard.

20. We do not believe the Hospital Labour Disputes Arbitration Act is intended to relieve union officials in the hospital sector of restrictions to which they would be subject in the private sector. It would be an absurd result if an unlawful threat made by a union official in the private sector was both illegal and subject to the Board's remedial authority, while the same threat made in the hospital sector – an "essential public service" – is neither illegal nor subject to sanction. Sections 8 and 11 of The Hospital Labour Disputes Arbitration Act appear to give the Board a broad authority to remedy unlawful conduct, and to further the legislative goal of industrial peace. To adopt the restrictive interpretation urged by Counsel could frustrate the very intention of the Act and we are unwilling to do so in the absence of very clear statutory language. We again emphasize the public interest in avoiding a strike that could paralyze hospital services across the province, and the ample evidence of the strike threat.

21. We are assisted in reaching our conclusion by section 10 of *The Interpretation Act* RSO 1970 c. 225 which provides as follows:

"Every Act shall be deemed to be remedial, whether its immediate purport is to direct the doing of anything that the Legislature deems to be for the public good or to prevent or punish the doing of any thing that it deems to be contrary to the public good, and shall accordingly receive such fair, large and liberal construction and interpretation as will best ensure the attainment of the object of the Act according to its true intent, meaning and spirit."

In our view, the intention of the legislation is clear, and that is to preserve industrial peace in the hospital sector. In order to accomplish this purpose the legislature has vested in the Board the authority to issue cease and desist orders in the event of an unlawful strike threat. In the result, we hold that that authority extends to threats of unlawful activity made by officers, officials and agents of the trade union.

22. On the basis of the evidence before us, the Board is satisfied and declares that the trade union and the named trade union locals, save and except local 79, threatened to call an unlawful strike. Local 79 is exempted from the declaration because counsel for local 79 did not receive notice of the continuation of this hearing, and in consequence did not have the opportunity to meet the applicants' case and cross-examine its witnesses. Since local 79 filed a separate reply and appeared by separate counsel at the original hearing it would be improper in the circumstances for us to make any order binding local 79 or any declaration in respect to its conduct. However, the Board is satisfied and declares that the named officers, officials or agents of the trade union threatened to engage in an unlawful strike. Accordingly, with respect to the trade unions and its locals, and the officers, officials or agents thereof, the Board is satisfied that the prerequisite conditions for the exercise of its authority under section 82 have been met.

23. Having regard to the circumstances the Board deems it advisable and hereby makes the following directions:

- (1) With respect to the trade union and the named locals that they:

- (a) cease and desist from threatening to call or authorize an unlawful strike, and from any and all activity in furtherance of an unlawful strike or the threat of an unlawful strike;
 - (b) advise the membership of the named locals that both the threatened strike and the strike threat itself are unlawful;
 - (c) inform the membership of the named locals of the decision of this Board and the reasons therefor.
- (2) With respect to the named officers, officials or agents of the trade union and its named locals that they:
- (a) refrain from any and all activity in furtherance of an unlawful strike or the threat of an unlawful strike;
 - (b) refrain from doing any act that they know, or ought to know, as a probable and reasonable consequence, will encourage another person to engage in an unlawful strike, or threaten an unlawful strike.

The Board further directs that anyone having knowledge of this order, and in particular any hospital employee, refrain from doing any act which they know or ought to know as a reasonable and probable consequence would result in an unlawful strike or the threat of an unlawful strike by hospital employees.

24. The Board must now consider the allegations of bad faith bargaining. Section 14 of the Labour Relations Act states:

“The parties shall meet within fifteen days from the giving of the notice or within such further period as the parties agree upon and they shall bargain in good faith and make every reasonable effort to make a collective agreement.”

25. Mr. Sack set out five areas of conduct by the hospitals which he alleges constitute a violation of section 14 of the Act whether they be taken individually or collectively. These are:

- (1) The *inordinate delay*: citing the events commencing with the union's efforts to achieve province wide bargaining in January of 1975.
- (2) The Hospitals lack of authority with respect to the *clerical employees*.
- (3) The quality of the bargaining as it related to the *para-medical employees*.
- (4) The failure of the hospitals to provide *supporting reasons* for its monetary proposals.
- (5) The adherence by the hospitals to the *Ministry of Health Guidelines*.

26. The first three of these allegations relate primarily to the conduct of the parties with respect to the establishment of procedures for province wide bargaining in furtherance of the recommendations found in the Johnston Report. The Johnston Report was explicit in its recommendation that central bargaining not be forced on the parties. Indeed, procedures which result from the voluntary endeavours of the parties themselves are far more likely to be acceptable to the parties and are consequently far more likely to endure. It must be stated that the hospitals were under no obligation to agree to the structures proposed by the union and neither was the union under an obligation to accept the structures proposed by the hospitals. This observation is made with particular reference to the clerical and para-medical groups. The parties were left to their own resources and ultimately worked out an agreement with respect to joint bargaining which was incorporated into the February 6th memorandum. The Board accepts that document as an accommodation agreed to by the parties and as an important accomplishment. It represents an agreement in respect of centralized bargaining on behalf of 59 hospitals and a similar number of independent local unions. Mr. Newell, the union representative assigned to the para-medical group, stated in evidence that because there was no legislation and further because it was the first attempted in this province, it was a very difficult undertaking. Mr. Edwards concurred in these sentiments. The Board is not prepared to find on the evidence before it and in the face of the most difficult task which confronted the parties that the "inordinate delays" or the hospitals lack of authority with respect to clerical employees were the result of bad faith bargaining on the part of the employer. Neither party was required to bargain on a province wide basis until an agreement to do so had been made.

27. The Board is sympathetic to the plight of the para-medical group in the face of the frustrations and disappointments which befell them. As stated above, however, the employer was under no obligation to agree to the procedural proposals of the para-medics and indeed Mr. Hamilton's letter of February 4th sets out in a realistic manner the very real problems which stood in the way of the province wide aspirations of this group who were in the main attached to composite bargaining units and were part of a much smaller group of para-medics than that represented by the O.P.S.E.U. The para-medical group eventually agreed to be absorbed into the service employees central committee and was given representation and the right to table its demands. In addition the employer undertook to "consider" these demands. Although there is a dispute as to whether the employer committed itself to special consideration Mr. Laroque in his evidence studiously avoided use of the adjective "special" and we found Mr. Laroque to be a most credible and reliable witness. We are not prepared to find in the circumstances of this case that the employer's failure to make specific responses to the items tabled by the para-medics amounts to a violation of section 14 of the Act.

28. Before proceeding to deal with Mr. Sack's fourth and fifth allegations with respect to the bargaining conduct of the hospitals, the Board feels compelled to state that the unlawful strike threats which were engaged in by the union prior to the commencement of bargaining and during bargaining could not help but adversely affect the course of bargaining. The union does not come before the Board in the section 79 complaint with "clean hands." Its conduct during the relevant period is of itself evidence of bad faith bargaining and if a counter complaint had been filed by the hospitals the Board would not have hesitated to so find.

29. Mr. Sack's fourth and fifth allegation go to the substantive bargaining as distinct from the procedural and relate to the monetary ceilings imposed by the Ministry of Health. The two were intertwined. There is no dispute and in fact the Board has taken judicial notice (paragraph 9) of the fact that the Ministry of Health holds the "power of the purse" in hospital industrial relations. The evidence establishes that the hospitals' offer which was termed as "fair" equates to the ceilings imposed by the Ministry of Health. In view of his "coincidence" Mr. Sack was moved to ask the rhetorical question, "Does the hospitals' offer become fair at the point it meets the guidelines?" The Board under section 14 is not concerned with the content of collective agreements but rather with the manner in which they are negotiated. Nevertheless, this "coincidence" when coupled with the rejection of Mr. Edwards' suggestion that the parties go hand in hand to the Ministry of Health, and *in the absence of any evidence to establish that the Ministry of Health has been involved other than to hand down its guidelines* raises a question in the Board's mind as to the quality of the bargaining process in the absence of the involvement of the Ministry of Health.

30. The Board in two recent decisions has dealt with the requirement for a full and open discussion of the issues as related to the duty imposed under section 14 of the Act. The Board said in the *DeVilbiss (Canada) Limited* decision [1976] OLRB Rep. March at paragraph 19:

"... it can be said that the duty is intended to foster rational informed discussion thereby minimizing the potential for "unnecessary" industrial conflict."

The Board stated in the subsequent *Canadian Industries Limited* case, Board File No. 1725-75-U dated May 7, 1976 and as yet unreported at paragraph 19:

"The requirement of rational discussion imposes upon the parties a duty to communicate with each other, recognizing that proper collective bargaining depends upon effective communication. Although a failure to communicate might not appear to be the same kind of wrong as an unwillingness to recognize the other party, it does, in fact, have a very serious effect on the collective bargaining process as a whole. The Breakdown of established bargaining relationships, because of an unwillingness to engage in full discussion with the other party, is likely to lead to more frequent resort to economic sanctions, and to greater dissatisfaction with the collective bargaining process. The obligation to bargain in good faith recognizes the importance of collective bargaining as a structure within which a full dialogue can be conducted between a trade union and the employer."

In the *Canadian Industries Limited* case (supra) the Board found that the respondent by not engaging in a full discussion of monetary issues notwithstanding the Federal anti-inflation guidelines had not met the requirements of section 14 of the Act. The Board must find that the employer in tabling on two separate occasions a bargaining position which it asked the union to accept and which it termed "total" and "fair" did not enter into the required full and open discussion of the rationale in support of its position. The hospitals were obviously reluctant to admit to the union that its total compensation offer was directly related to and fixed by the Ministry of Health guidelines. The evidence, however, supports this conclusion. The Union in reassessing the justification of its position in light of the hospitals' offer was

entitled to be apprised of not only the factors which determined the compensation offer but also the underlying rationale in support thereof. Collective bargaining is an exercise in decision making (see *Graphic Centre* case, Board File No. 0035-76-U as yet unreported) and in order that the union's decision making capability not be undermined it is entitled to this information.

31. Notwithstanding the requirement for full and rational discussion there is another aspect of the bargaining process which deserves attention in the circumstances of this case. Collective bargaining by its very nature precipitates an open and healthy clash of opposing ambitions, expectations, fears, and necessities; in other words a ventilation of differing points of view on a wide range of issues. A fundamental purpose of collective bargaining as established under the laws of this Province is to provide the vehicle whereby the employee viewpoint is transmitted to the "employer" and vice versa. Although the management negotiator in the industrial setting is restricted by corporate "guidelines" it is understood that there is communication between the bargaining table and the corporate executive. The result of this communication may do nothing more than affirm the tabled positions but nevertheless this communication process of itself serves to satisfy a primary purpose of collective bargaining. Whereas it might well be an easier task for the hospitals to petition the Ministry of Health for additional funds if such are necessitated by an arbitration award it cannot be denied that the failure to involve the Ministry of Health in the bargaining process of which there is no evidence in this case serves to frustrate this fundamental purpose of collective bargaining. It can also not be denied that whereas arbitration is substituted for the strike as the final dispute resolution mechanism in the hospital sector the duty to bargain up to that point is no different than where the right to strike exists. The employees must be assured that their concerns and their demands do not fall on "deaf ears" because decisions which determine the course of bargaining and indeed the end result have been made prior to bargaining, by persons who have no involvement in the bargaining process and by persons who are not subsequently apprised of the union's rationale in support of its bargaining position.

32. The shortcomings in the bargaining process as they can be attributed to the employer hospitals relate to *firstly* a failure to engage in open and full discussion with respect to monetary issues (although the union itself did not satisfy this obligation) and *secondly* a failure to provide a channel whereby the union's point of view can be put to the ultimate decision makers. Both of these failures result in frustration and an undermining of the collective bargaining process and whereas they do not justify resort to unlawful activity they do cause the Board to find that the employer has not complied with the duty to bargain in good faith as set out in section 14 of The Labour Relations Act. The Board has no jurisdiction in this matter to deal with the Ministry of Health and must state that this decision is in no way intended to imply that the Ministry of Health be physically present at the bargaining table. The Ministry, however, controls the purse strings and the hospitals, therefore, must be in close liaison with the Ministry of Health if the hospitals are to comply with the duty to bargain as set out in section 14.

33. On the basis of the evidence adduced before us, and discussed in the foregoing paragraphs, the Board is satisfied that the employer has not fulfilled its statutory obligation to bargain in good faith and make every reasonable effort to make a collective agreement. Pursuant to section 79 of The Labour Relations Act the Board therefore directs that the employer meet with the trade union forthwith and bargain in good faith having regard to the requirements of that duty in the circumstances of this case as discussed in paragraphs 30

and 31 above. Because the parties are currently bargaining the Board declines, at this time, to make a more specific order; however the Board remains seized of this matter in the event it becomes necessary to hear representations with respect to a more specific direction.

0783-75-R International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), (Applicant), v. **Inglis Limited**, (Respondent).

Employees – S1(3)(b) – Underlying purpose of section and tests used in applying it – Whether Buyers, Customs Agents, Process Engineers, Product Engineers, Time Study Analysts are excluded.

BEFORE: Kevin M. Burkett, Vice-Chairman and Board Members J.D. Bell and O. Hodges.

APPEARANCES: *Webster Cornwall for the applicant; Michael Gordon and John Utter for the respondent.*

DECISION OF KEVIN M. BURKETT, VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES; June 17, 1976:

1. The Board received the report of the Labour Relations Officer in this matter dated 3rd March, 1976 and entertained the representations of the parties in respect thereof on 15th April, 1976. The Board must determine whether certain persons employed by the respondent company in the functions of buying, production and process engineering, time study and secretarial are employees within the meaning of section 1(3)(b) of the Act.

2. Section 1(3)(b) of the Act states:

“(3) Subject to section 80, for the purposes of this Act, no person shall be deemed to be an employee,

(b) who, in the opinion of the Board, exercises managerial functions or is employed in a confidential capacity in matters relating to labour relations.”

3. Preliminary to a discussion of the Board jurisprudence in the area of managerial and confidential exclusion under section 1(3)(b) of the Act is an understanding of the underlying purpose and necessity of the section. The Act is designed to promote harmonious relations between employees and employers by encouraging the practice of collective bargaining and by requiring that the bargain struck be honoured for the duration of its term subject to arbitral adjudication of any dispute which arises as to its meaning or application. Collective bargaining by its very nature requires an arm's length relationship between two sides whose interests, objectives and priorities are often divergent. It is critical in striking a bargain which is fair to both sides that the process elicit an open and exhaustive discussion

of the respective objectives and priorities and that where these are in conflict the supporting rationale be advanced by persons whose loyalties are undivided. It is further imperative that the acceptance or rejection of whatever agreements arise from the bargaining process be made by persons of undivided perspective and that the subsequent on-going administration of the accepted bargain be by persons having a clear duty to one side *or* the other. The effective operation of the system of labour relations which presently exists in this jurisdiction is based on an underlying recognition of the inherent differences between the employer and the employees and the need for an arm's length relationship between the employer, as embodied by those who exercise managerial function or are employed in a confidential capacity in matters relating to labour relations, and the employees.

4. The Board is empowered under section 1(3)(b) to determine which employees exercise duties and responsibilities requiring, on the one hand that the employer be given their undivided loyalty and on the other that the trade union not be weakened or compromised by their inclusion within its ranks. In the face of the hierarchical structure of many large organizations and the dependency of the more senior persons in the hierarchy on the information and input of "specialists" and functional experts the section can be a most difficult one to apply especially as it pertains to so-called "middle management" and to persons who possess technical expertise. Notwithstanding the overriding concern that there be no conflict of interest the Board must be circumspect in the exercise of this discretion having regard to the fact that those who are declared to be "managerial" are denied access to the collective bargaining process. In view of this "remedial" aspect, therefore the onus is placed on the party seeking to exclude a person from the operation of the Act to satisfy the Board of the exercise of managerial functions. (See *York University* case [1975] OLRB Rep. Dec. 945 wherein reference is made to *Ajax Pickering General Hospital* case [1970] OLRB Rep. Feb. 1283).

5. The Board pointed out in the *McIntyre Porcupine Mines Limited* case [1975] OLRB Rep. April 261, that the Act contains no definition of the terms used in section 1(3)(b) and the Board, therefore, has had to proceed by deductions. The lack of statutory definitions, however, allows the Board a degree of flexibility which it might not otherwise have in applying this section to a myriad of business organizations. The Board is able to look to the duties and responsibilities of those in question within the context of their particular work setting and thereby apply the section having regard to its underlying purpose.

6. The jurisprudence of this Board reveals that the discretion of the Board under section 1(3)(b) operates on two levels. It operates *firstly* to exclude persons who can affect the terms and conditions of employment and/or the employment relationship of those in the employ of the organization, and *secondly* it operates to exclude those who make decisions with respect to policy and the overall operation of the organization. In theory it can be easily seen that persons who exercise either or both types of function would find themselves in a conflict of interest if included within a bargaining unit of other employees. In practice, however, it is often difficult to distinguish those who make decisions which would precipitate a conflict of interest from those who implement the decisions of others or who operate at a level of decision making which would not result in a conflict if they were found to be employees for purposes of the Act. The Board in the course of applying section 1(3)(b) has developed certain insights and tests which are helpful in determining the status of the persons who are in dispute in the instant case.

7. It is helpful to note at this point that there are two types of persons whose recommendations can potentially affect the terms and conditions of employment and/or the employment relationship. There is the first line supervisor, traditionally referred to as the foreman who directs the daily flow of work and who may or may not be responsible for a number of ancillary matters such as the imposition of discipline, the granting of time off, the scheduling of overtime, the recording of attendance etc. He may even hire and fire. There is also the technical expert whether it be in the area of time study, methods or process engineering whose responsibilities and decision making capabilities can affect not only terms and conditions of employment (i.e. incentives, production bonus) but the employment relationship itself (i.e. lay-off). The Board in assessing the duties and responsibilities of a front line supervisor has been cognizant of the policy and organization restraints which now dilute his decision making authority and has developed the test of "effective recommendation."

"This concept has come to mean that if a person spends most of his time supervising the work of others *and* makes effective recommendations that materially affect the conditions of employment of those supervised, the Board may conclude that such persons are exercising managerial functions. In this sense an effective recommendation is a serious recommendation that the evidence demonstrates is usually acted upon, and therefore a recommendation that materially affects the economic lives of employees." (See McIntyre Porcupine case, *supra*).

The Board recognizes that although the foreman may not have the final and undisputed authority which he once did, his power of effective recommendation with respect to discipline, promotion, demotion, time off etc. is a managerial function within the meaning of section 1(3)(b). The foreman who effectively recommends in these areas would find himself in a conflict of interest if placed in a bargaining unit with other employees. It is important to note that it is not the supervisory aspect of his function per se which creates the potential for conflict but the power of effective recommendation as it effects the employment relationship of other employees.

8. The Board has been somewhat less clear in setting out the tests to be applied when determining whether technical experts exercise managerial functions within the meaning of the Act. In the *Hydro-Electric Power Commission of Ontario* case [1969] OLRB Rep. Aug. 669 the Board was dealing, among others, with certain work study technicians and public relations types. The Board did not distinguish between the criteria upon which it might determine the status of a work study technician as opposed to a public relations person and concluded that in both cases the criteria was that of decision making as opposed to effective recommendation.

"The fact that an expert employee may recommend a course of action which a member of management may decide to follow does not of itself make the employee's recommendation a managerial function. Although a recommendation may be the basis of the decision taken, however, it is the decision to implement the recommendation which can correctly be described as the managerial function. If a person actively participates in the making of such decisions on a regular basis he may be said to exercise managerial functions within the meaning of section 1(3)(b) of the Act.

The Board in the *Algoma Steel Corporation Limited* case [1970] OLRB Rep. June 365 was required to determine the status of certain planners and analysts and did so not only the basis of both independent decision making as suggested in the *Hydro* case *supra* but also on the basis of the power of effective recommendation. The Board said in the *Algoma* case *supra* at paragraph 12:

“The exercise of discretion and the ability to make independent decisions is a particularly thorny problem in the case of those persons classified as planners and analysts. *We are inclined to the view that those persons in the foregoing classifications whose jobs entail the making of independent decisions or who can make effective recommendations with regard to such matters as job evaluation, methods analysts and improvements, and the setting and maintenance of incentives and bonuses, do exercise managerial functions* and may also be employed in a confidential capacity in matters relating to labour relations because of the use that is made of their work in negotiations with the applicant union. A prerequisite to such a determination, however, is that their decisions and recommendations influence or affect in some way the wages or working conditions or the very jobs of other persons in the employ of the respondent. Notwithstanding even the exercise of a considerable amount of independent discretion, if a person only provides material or data but does not have any influence on the decisions that are made based on the material or data, then the attributes which are associated with the exercise of managerial authority do not attach to such persons. Rather, they are only advisory technical employees.”

The Board in the *Rio Algom Mines Limited* case [1970] OLRB Rep. Nov. 865 considered effective recommendation to be indicative of the managerial function of two project technicians.

“We find that the project technicians are engaged in the performance of work which results in their assessing information gathered by them so that they can make meaningful decisions upon which their recommendations to management are based. Since their recommendations are adopted as part of the policy implemented by management, such recommendations are effective recommendations and may be characterized as a managerial function.”

9. Is the criteria one of independent decision making or is it one of effective recommendation? The Board has seen fit to apply the test of effective recommendation to persons engaged in the supervision of others (paragraph 6 herein) because a person engaged in supervision who makes effective recommendations as regards terms and conditions of employment would be compromised if placed within a bargaining unit of other employees. Similarly, a technical expert or mid-management person who makes effective recommendation (of the type contemplated in the *Algoma Steel* case, *supra*) with respect to terms and conditions of employment should likewise be excluded. A confusion arises when the test of effective recommendation is applied to technical experts or middle management personnel whose functions are distinct and apart from employee relations. In the *Hydro* case, *supra* the Board was dealing with two types of technical experts; the work study technician whose expertise related to conditions of employment, and public relations persons whose expertise was in areas distinct and apart from employee relations. The Board applied the test of inde-

pendent decision making as recounted in paragraph 8 herein to both the work study technicians and the public relations personnel and did not distinguish between the two. A proper application of the section, however, requires that a distinction be drawn. A person who is engaged in a function which does not have a direct bearing on conditions of employment should not be excluded from the Act unless he is charged with independent decision making responsibility as that term has been used by the Board. The making of effective recommendations which can have no effect on terms and conditions of employment does not place a person in a conflict of interest situation vis a vis labour relations and is not sufficient, therefore, to cause a person to be excluded from the operation of the Act. The Canada Labour Board was recently asked to decide whether all employees of the marketing department of the B.C. Telephone Company save and except the Vice-President of Marketing and his executive secretary were employees within the meaning of Section 107(1) of the Canada Labour Code, which is a similar section to 1(3)(b) of the Ontario Act. (See *British Columbia Telephone Co.* case, Board File 555-360, February 26, 1976). The Canada Board was definite in rejecting the "effective recommendation" criteria and aptly stated at page 38 of that decision:

"In many large enterprises, the tasks of preparing the documentation which will be a key input in the decision-making process or of ensuring that a decision is being effectively implemented have been entrusted to highly skilled white-collar employees or to professionals. Often, these persons are known as "managers." But the importance of the role of these "knowledge workers," as the applicant calls them, does not detract from the fact that their role is that of a worker or "employee" and not that of a manager.

The existence of a power to recommend instead of a power to decide is often a key indicator of the nature of the role played by a person or a group of persons in an enterprise. It is not just a question of semantics but a means of ascertaining where the real authority and responsibility lie. In such a context, the originator of a recommendation simply provides an input into the actual decision. The fact that recommendations are generally effective does not mean that the focus of the decision-making process has somehow been displaced. It is a reflection of the fact that the author of the recommendation does a good job and it might have much to do with whether or not he is likely to ever become a decision maker, but it does not change the nature of his job which is essentially that of a subordinate, however highly skilled."

In answer to the question raised at the outset of this paragraph the Board states that persons engaged in a function with little or no impact on employee relations must be judged to be managerial on the basis of independent decision making responsibility, whereas persons who make "effective recommendations" which can affect the employment relationship must be judged on the basis of these recommendations to also exercise managerial functions within the meaning of section 1(3)(b) of the Act.

10. The Board jurisprudence with respect to the interpretation of section 1(3)(b) as it relates to persons "employed in a confidential capacity in matters relating to labour relations" has been capsulized in the *York University* case [1975] OLRB Rep. Dec. 945 at page 951.

"... That is to say the Board must be satisfied of 'a regular, material involvement in matters relating to labour relations' to justify a finding excluding a person from operation of the Act. (See, *The Falconbridge Nickel Mines Ltd.* case OLRB M.R. September [1969] 379). Mere access to confidential information that may pertain to labour relations, standing alone, is no reason for excluding employees from the bargaining unit. (*The Metropolitan Separate School Board* case OLRB M.R. April [1974] 220). Nor is mere knowledge of matters that may be deemed 'confidential' in the sense that the employer would not approve of the disclosure of such information by his employees sufficient to justify a positive finding under section 1(3)(b). (See, *The Comtech Group Limited* case OLRB M.R. May [1974] 291). The important test is whether there is consistent exposure to confidential information on matters relating to labour relations so as to constitute such exposure an integral part of the employees' service to the employer's enterprise. (See, *The Toledo Sale Division of Reliance Electric Limited* case OLRB M.R. June [1974] 406)."

The Board stated in the *Falconbridge* case [1966] OLRB Rep. Sept. at page 379 that an exclusion based on "confidential capacity" must follow from –

"... a regular material involvement in matters relating to labour relations which are confidential because their disclosure would adversely affect the interest of the employer ..."

11. The Board has before it evidence of the duties and responsibilities of all persons (as opposed to a representative person) employed in the classifications which are in dispute. It is the intention of the Board to consider the evidence as it relates to a classification and, unless the evidence requires that a particular person(s) be decided differently, to include or exclude all the persons on the basis of their performing within the same classification. The rationale in support of this approach was enunciated at paragraph 18 of the *McIntyre* case, supra wherein the Board stated:

"This approach – generally resulting in a total inclusion or exclusion of persons in identical job positions or job classifications – corresponds with the realities of industrial relations and accords with common sense. It is likely that all of the Shift Bosses and Foremen, in an organization as large as the respondent's possess identical responsibilities and powers, although their individual perceptions, memories and abilities may fail to reflect a total uniformity in their duties. Just as important is the observation that partial exclusions or inclusions of people occupying identical job classifications (without significant differences in their job duties) would appear unfair and be difficult for the parties to administer. (This same position was taken in *The Corporation of the District of Burnaby* [1974] 1 Canadian LRBR 1 (BCLRB); *Municipality of Metropolitan Toronto* [1962] OLRB Rep. December 322; *Versafood Services Limited, Institution Division, University of Guelph* [1968] OLRB Rep. July 365)."

The Board therefore will make its determinations on the basis of the following classifications:

(1) Buyer

- (2) Customs Agent
- (3) Process Engineer
- (4) Product Engineer
- (5) Time Study Analyst

The secretaries will be determined on an individual basis.

BUYERS

12. The purchasing function within the context of the respondent's operation is a response function arising out of decisions taken within the organization with respect to both the level of production and the quantity and quality of the component parts of the products to be produced. The buying function does not impact on the employment relationship in any meaningful way and the Board, therefore, in determining if the persons classified as buyers exercise managerial function within the meaning and purpose of section 1(3)(b) must look to independent decision making responsibility as the prime indicator.

13. The persons classified as buyers do not exercise supervisory responsibilities and do not hire or fire or make recommendations in this regard. They do not impose discipline nor do they grant time-off. None of the buyers have offices of their own. They do not take part in management meetings at which industrial relations matters are discussed although they concern themselves with the labour relations of supplier companies. They do this because of the possibility that a strike or lock-out could disrupt the supply of parts and materials. The information which the buyers receive with respect to the labour relations of supplier companies, however, is not "confidential" information as would require the Board to exclude a person from the operation of the Act. Such information does not create a potential for a conflict of interest vis-a-vis the respondent employer and in addition the very fact that it has been divulged by a supplier company renders it something less than confidential.

14. The bulk of the "buyers" time is spent in controlling and expediting the inflow of parts and materials. The respondent operates a computerized system of materials control whereby the exact quantity of parts and materials which are required to meet upcoming production needs is determined by computer calculation. The company places "blanket orders" with suppliers and the buyer, on the basis of the computer calculation signs a release authorization(s) for the specified quantity. Although these authorizations bind the company to often substantial payments for the parts and materials, the function of the buyer in this regard is not a decision making one requiring an independent exercise of his judgment. The buyer is then responsible for expediting the movement of the materials from the supplier's premises to those of the respondent. The buyers are also charged with the purchase of certain non-manufacturing supplies. In this regard, however, the buyer is maintaining inventory levels within pre-determined limits. None of these are functions which would cause the Board to decide that the buyers exercise managerial function as evidenced by independent decision making responsibility. The magnitude of the cash expenditures which are authorized by the buyers does not in the circumstances cause these persons to be "managers."

15. The purchasing department is charged with selecting a supplier for new parts or components and must therefore make comparison decisions with respect to cost and quality. Drawings of new parts are issued with Engineering Change Orders which result in the purchasing department having to invite tenders and to select a vendor or supplier. The evidence establishes that decision making authority in this regard resides with Mr. J. Duguet, the supervisor of purchasing, who reports to Mr. H.V. McIntyre, the manufacturing materials manager. Mr. Spry admitted in his evidence that Mr. Duguet makes the final decision as to what vendor will get the job. Mr. McIntyre stated:

"I would decide which vendor but it is done in conjunction with John (Duguet). If I decided that I wanted to go one way, and he said 'well this supplier in the past has not performed adequately' or 'I don't feel we should go that way,' then I would reconsider my position."

Mr. Agnew stated:

"... when parts are issued or an Engineering Change Order and the drawings are issued with it, it would go direct to John Duguet and then John would advise each buyer who he should contact regarding sourcing some of these parts ..."

The evidence of all four buyers is consistent in this regard and although they may make recommendations and in fact sign the purchase orders and releases, it is Mr. Duguet who makes the ultimate decisions and it is he who exercises managerial functions. The buyers do not exercise a level of independent decision making which would require that they be excluded for purposes of the Act, nor are they privy to confidential information of the type described at paragraph 10 of this decision. Accordingly the Board finds that Messrs. Batter, McIntyre, Spry and Agnew are employees who properly fall within the bargaining unit for which the applicant seeks bargaining rights.

CUSTOMS AGENT

16. The customs agent, Mr. Angelo Gava, is responsible for the clearing of goods through customs and the payment of the required duties on behalf of the company. He has an acknowledged expertise in matters relating to the Customs Act and as a result can and has challenged the amount of duty which has been levied against the company. In one instance the challenge resulted in a prolonged court proceeding which was handled by the respondent's Customs Department in Toronto. He has a power of attorney (as did his assistant who left before the date of this application) of up to \$80,000 per transaction. He has initiated changes in import carriers and did on his own negotiate an arrangement with a cab company to pick up and deliver from the Toronto Airport.

17. The evidence does not disclose a level of independent decision making which would require the Board to find that Mr. Gava is a "manager." His scope of authority as it relates to the clearance of goods through customs and the payment of the required duties, which is his primary responsibility, is circumscribed by the governing legislation. He is undoubtedly a technical expert whose knowledge and understanding of customs procedures is invaluable to the operation of the respondent's production facilities. He is not, however, a manager charged with independent decision making which would cause him to be excluded

from the operation of the Act. The Board finds, therefore, that Mr. Gava is an employee who properly falls within the bargaining unit for which the applicant seeks bargaining rights.

PROCESS ENGINEERS

18. The two process engineers who are in dispute, Mr. H. Hakim and Mr. P. Draper, are responsible for the finishing and tooling processes respectively and report to the manager of manufacturing engineering who in turn reports to the Vice-President Engineering. The process engineers do not have supervisory responsibilities and do not, hire, fire, reprimand or grant time off or make recommendations in these areas. They do not have offices. They attend management meetings but these meetings focus on the manufacturing processes rather than on industrial relations matters although the manpower implications of process changes are discussed at these meetings.

19. The basic function of the process engineer is to monitor the process for which he is assigned responsibility and to suggest improvements and modifications where appropriate. The evidence clearly establishes that the decision making authority of the process engineers is both circumscribed and of a secondary nature. They do, however, make recommendations with respect to the different manufacturing processes. Both witnesses testified that their recommendations can have an impact on manpower requirements and that the potential reduction in manpower is included in such recommendations. For example, the recommendation to make or buy a particular tool has a direct bearing on manpower requirements. The Board has paid particular attention to the written report of Mr. Hakim in which he recommended that a powder coating process be adopted in order to increase the capacity of the enamel shop and reduce the required manpower. The written recommendation in this regard made specific reference to a reduction in manpower from 28 to 12 persons and decisions were taken on the basis of this recommendation to implement the powder coating process in late 1975.

20. The Board finds that whereas the process engineers do not have scope for independent decision making they do make effective recommendation which can result in a reduction of the company's manpower requirements and as a result they would find themselves in a conflict of interest if they were to be included within the bargaining unit. A person who is expected in the normal course of his technical duties to make judgemental recommendations which may result in the lay-off of production employees should not be included in a bargaining unit albeit an office and technical unit. The potential for conflict of interest dictates that such persons be declared to exercise managerial function within the meaning of section 1(3)(b). The Board finds, therefore that Messrs. J. Hakim and P. Draper exercise managerial function and are not to be included in the bargaining unit for which the applicant seeks bargaining rights.

PRODUCT ENGINEERS

21. It would appear that the product engineers operate on two levels. Mr. John Pashniak has been assigned to a task force group involved in advance design and development, whereas Mr. Allen and Mr. Cusolle are assigned responsibility for specific products and are primarily concerned with the functional integrity of the products presently in production or soon to be produced. Mr. Pashniak reports to Mr. F. Bishop, the manager of prod-

uction development, who in turn reports to Mr. G. Perdue, the manager of manufacturing engineering and production development (the persons to whom the process engineers report directly). Messrs Allen and Cusolle report to Mr. D. Chirapetta, the manager of product design.

22. Mr. Pashniak does not supervise any employees and does not hire, fire, discipline, grant time off to other employees or make recommendations in this regard. He attends management meetings but these are technical meetings at which product design is discussed. He is primarily concerned with design proposals, the building of models, testing, costing, tooling and feasibility. He replied in the *negative* to Mr. Gordon's question with respect to whether he is privy to information which would permit him to forecast if the company is going to need more employees or fewer employees. He admitted that his department is removed from the final decisions as to what components are used. The recommendations which are made to the product engineering group are done so over Mr. Bishop's signature. The evidence establishes that although Mr. Pashniak possesses considerable technical expertise he does not engage in independent decision making in matter of importance to the functioning of the company, nor does he make effective recommendations with respect to the employment relationship of employees. The Board finds therefore that he is an employee for purposes of the Act and properly falls within the bargaining unit for which the applicant seeks bargaining rights.

23. Messrs. Allen and Cusolle are primarily responsible for the the integrity of the design of existing products and in this regard work closely with the department which monitors customer complaints and field problems. They determine the feasibility of changing or modifying components and make recommendations in this regard. They meet, as part of a company delegation, with the institutional customers of the company to discuss product features which these customers desire. In the course of their duties the product engineers spend some of their time in the production area and other factors which may be affecting product quality. There is no evidence, however, to support a finding that this input has ever resulted in discipline or termination. Similarly, any recommendation to stop a production line must be put through "proper channels." There are two draftsmen and a model builder who work in conjunction with the two product engineers. The evidence establishes that the project engineers give technical guidance and direction to the two draftsmen and the model builder and are responsible for the general supervision of their work. It is Mr. Chiapelta's signature, however, which must be affixed to all drawings as a final authorization. It is Mr. Chiapelta who grants time-off and authorizes overtime. The product engineers do not hire, fire, or impose discipline or make recommendations in this regard and although on one occasion a short-term draftsman was terminated after a project engineer had criticized his work performance, the Board is not prepared to find that the product engineers exercise a degree of authority over the draftsmen and model builder as would require that they be excluded from the operation of the Act. (See the *Westmount Hospital* case [1976] OLRB Rep. Feb. 24 which deals with head nurses who are in a similar situation).

24. The product engineers do not engage in decision making at a level which would require the Board to find that they exercise managerial function. They are highly skilled technicians who are called upon to exercise their judgment and to make technical recommendations. They provide necessary input into the decision making process but they do not "manage" or exercise an independent decision making responsibility which would cause the Board to exclude them from the operation of the Act. They are not privy to confidential in-

formation of the type described in paragraph 10 of this decision. The Board finds that Messrs Allen and Cusolle are employees who properly fall within the bargaining unit for which the applicant seeks bargaining rights.

TIME STUDY ANALYST

25. The company employs four time study analysts who in the course of their normal duties carry out time studies, perform line balance calculating, assist in work station layout, prepare manpower reports based on production forecasts, calculate the manpower implications arising out of Engineering Change Orders and from time to time assist line supervision in the identification of production problems as they relate to human effort. The time study technicians report to Mr. T. Skinner the Manager of Industrial Engineering as do five industrial engineers. The time study technicians do not supervise other employees and do not have authority to hire, fire, reprimand or grant time off. Although they may indicate to a foreman that an operator is not putting forth sufficient effort, there is no evidence to suggest that disciplinary action is the usual result. The technical function performed by these persons is one which can potentially affect the conditions of employment of other employees and thus the Board in deciding if these persons exercise a managerial function within the meaning of the Act must determine if they exercise a power of effective recommendation in regard to the terms or conditions of employment of other employees.

26. Article 28, "Production Standards" of the subsisting collective agreement between the respondent company and Local 525 of the U.A.W. provides for the maintenance of a measured day work plan to be applied to all operations wherever practicable and to be established by recognized industrial engineering techniques. The article sets out the conditions and circumstances under which jobs may be studied, differentiates between permanent and temporary measured day work standards, sets out the maximum period of allowances and the conditions under which a standard may be modified. Article 29 sets out the grievance procedure on standards and provides for final and binding settlement of all disputes by arbitration.

27. The production standards which govern the pace at which the production employees work are determined in accord with Article 28 of the collective agreement and can be challenged in accord with Article 29 of the collective agreement. The calculations of the time study analysts who are responsible for the initial timing of a job and for the "line balancing" can give rise to union grievances. The time study analysts are involved up to the point of restudying a job but have never been involved in the grievance procedure beyond this point. There is no evidence as to who performs the subsequent checks or who represents the company in discussion with the union or at arbitration. The evidence is clear, however, that it has never been the time study analysts. There is no evidence to suggest that the time study analysts become involved in the negotiation of the contractual language pertaining to standards. The time study analysts provide a technical rather than judgmental input which is circumscribed by the collective agreement and by recognized industrial engineering techniques.

28. The time study analysts determine the manpower requirements of the company based on its production forecasts and also determine the manpower implications of Engineering Change Orders. In making these determinations the time study analysts perform technical calculations based on the data which is given to them and in turn relay the results

of these calculations. The Board does not consider the application of this technical expertise and the resultant relay of the derived information to be an "effective recommendation" in the sense that the term is used by the Board as indicia of managerial function. An "effective recommendation" presupposes an exercise of judgment. The supervisor who witnesses conduct on the shop floor must exercise his judgment as to whether the conduct warrants discipline and if so to what degree. The judgment of the supervisor in this regard determines if there will or will not be a recommendation and shapes the content of the recommendation. If the evidence establishes that the resultant recommendation is usually acted upon it then becomes an "effective recommendation" which the Board has found to be sufficient to cause a person to be excluded from the operation of the Act. This is so because the judgment of the supervisor might be compromised if he were faced with conflicting loyalties. Similarly, in the instant case, the Board has found that the process engineers should be excluded on the ground that they make "effective recommendations" which impact upon the employment relationship. Their recommendations follow from judgmental decisions with respect to the feasibility and practicality of certain processes. Their inclusion within a bargaining unit would create a potential for conflict of interest which might affect their judgment and as a result they have been found to perform managerial functions. The time study analysts, on the other hand, perform technical calculations on the basis of data which is supplied to them. They apply recognized industrial engineering techniques which minimize, if not eliminate, the exercise of personal judgment. Their input into the decision making process cannot be considered to be recommendations in the sense that a recommendation requires the exercise of personal judgment. The inclusion of the time study analysts in the bargaining unit would not in any way undermine or compromise the decision making process nor would it cast the time study analysts into a conflict of interest. Their input is the product of fixed technical calculations and does not follow from the exercise of personal judgment. Although the company depends upon the accuracy of the calculations performed by the time study technicians, these calculations would not be any less accurate if the time study analysts were to be included in a bargaining unit of clerical and technical employees. The calculations would be done in the same way with the same result. The technical competence of the time study analysts, which is a measurable quality, would not be affected by their inclusion in such a bargaining unit. It should be added that the line supervisor has the right to challenge the manpower calculations and that these disagreements are resolved at a more senior level.

29. The Board has considered the evidence as it relates to the time study analysts and has concluded that unlike the time study technicians in the *Canadian Acme Screw Limited* case [1967] OLRB Rep. 872, the time study analysts in this case do not have discretionary authority to make effective recommendations in labour relations matters and neither are they privy to confidential information in matters relating to labour relations which if divulged would adversely affect the respondent and the Board finds the time study analysts to be employees for purposes of the Act as it did in the *Canadian Blower and Forge Company Limited* case [1974] OLRB Rep. Nov. 771 and the cases cited therein. Messrs. Randles, Bartel, Clifton and Rusnak are employees who fall within the bargaining unit for which the applicant seeks bargaining rights.

SECRETARIES

30. The Board has reviewed the evidence as it relates to each of the four secretaries who are in dispute and has concluded that the evidence supports the exclusion of Angela

Otter because of her regular material involvement in confidential matters relating to labour relations. The Board finds, however, that the other three secretaries, although privy to confidential information in matters relating to labour relations which if exposed would adversely affect the interest of the employer. (See the *Daal Specialty* case [1973] OLRB Rep. No. 593 and the *Toledo Scale* case [1974] OLRB Rep. 406) Elizabeth Boersma, Jeanne Scrimshaw and Debra Presndente are employees of the respondent company who fall within the bargaining unit for which the applicant seeks bargaining rights.

31. The Board notes the agreement of the parties that the *draftsmen* be included in the bargaining unit, that the *keypunch operator* be included in the bargaining unit, that the *personnel and payroll* department employees Patricia Lilliman and Terry Marshall be included in the bargaining unit and that the *secretaries* Claudia Carson, Simon Fawcett and Susan Mahar be included in the bargaining unit. The Board also notes the agreement of the parties that H. MacDonald-Mullet, the senior project engineer, be excluded from the bargaining unit because he is employed in a managerial capacity.

32. The Board finds that all clerical, office and technical employees of Inglis Limited located at Stoney Creek, Ontario, save and except supervisors and persons above the rank of supervisor, private secretary to the vice president, secretary to the engineering manager, personnel and payroll department employees, project engineers, the senior project engineer, students employed during the school vacation period and students engaged in a co-operative training program, constitute a unit of employees of the respondent appropriate for collective bargaining.

33. The Board is satisfied on the basis of all the evidence before it that more than fifty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made, were members of the applicant on August 29, 1975, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the Said Act.

34. A certificate will issue to the applicant.

DECISION OF BOARD MEMBER J. D. BELL:

I am in agreement with the majority of the Board on their decision except in the following two categories:

- a) I would find that the product engineers, Messrs. Pashniak, Allen and Cusolle are technical persons, who in the course of their duties make judgemental recommendations which do affect the enterprise and therefore a potential for conflict of interest will exist if they are included in the bargaining unit.
 - b) The same potential conflict exists for the four time study analysts, Messrs. Randel, Bartel, Clifton and Rusnak and they also should be excluded from the bargaining unit.
-

0261-76-U David Matthews, (Complainant), v. The Hotel and Club Employees' Union Local 299, Toronto, affiliated with The Hotel and Restaurant Employees and Bartenders' International Union, AFL-CIO-CLC, (Respondent).

Duty of Fair Representation – Whether President of Local Union must consult with negotiating committee before modifying union's position in bargaining.

BEFORE: Ian C.A. Springate, Vice-Chairman, and Board Members O. Hodges and J.E.C. Robinson, Q.C.

APPEARANCES: *David Matthews for the complainant; Harold F. Caley and Charlie Ireton for the respondent.*

DECISION OF THE BOARD: June 28, 1976:

2. This is a complaint brought under Section 79 of The Labour Relations Act alleging a violation of Section 60 of the Act. Section 60 stipulates that a trade union shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of employees within a bargaining unit.

3. The respondent represents employees in a number of major hotels in Metropolitan Toronto. One such hotel is the Royal York Hotel. The most recent collective agreement between the respondent and the Royal York Hotel expired on April 7, 1976.

4. The complainant has been an employee of the Royal York Hotel for over 9 years. He is a union steward at the Hotel, as well as a member of the respondent's Royal York Hotel negotiating committee. The complainant impressed the Board as being an articulate and concerned individual whose sole purpose in bringing this complaint was to ensure that the respondent adopted what is in his view the proper negotiating stance with respect to the current round of negotiations with the Hotel.

5. The president of the respondent is Mr. Charlie Ireton. He was employed at the Royal York Hotel for some 27 years prior to assuming his current full-time position with the respondent in 1972. Mr. Ireton first served on a union negotiating committee engaged in collective bargaining with the Royal York Hotel in 1954 and he testified that he has been involved in every set of negotiations between the respondent and the Royal York Hotel since that time.

6. In January, 1976 the executive of the respondent commenced its preparations for the round of negotiations necessitated by the approaching expiry of the collective agreement with the Royal York Hotel by preparing a draft set of bargaining proposals. This draft was subsequently presented to a meeting of the respondent's members employed at the Royal York Hotel, and adopted as the respondent's bargaining proposals by a vote of the members present. An 8-member negotiating committee was also established. This negotiating committee was not elected, but rather selected in a rather informal manner under the direction of Mr. Ireton. Some of the members were approached and asked to participate, while others volunteered their services. Mr. Ireton testified that his primary concern in de-

termining the composition of the negotiating committee was that as far as possible it contain a cross-section of the different classifications of employees at the Hotel. The complainant, who had served on 4 previous negotiating committees, was placed on the committee after he volunteered his services.

7. Although the original collective agreement proposals voted on by the membership covered a fairly wide range of issues, only the proposed wage increase is of concern in these proceedings. The initial union proposal was for an across the board wage increase of 30 per cent plus 35 cents per hour over a one year agreement. This proposal was placed before the management of the Royal York Hotel at a first negotiating session held on February 16, 1976. At a second negotiating session held on April 16, 1976 the Hotel responded with an offer of a two year agreement with wage increases of from 3 per cent to 8 per cent for each of the two years, depending on classification. At a third negotiating session held on April 29th the respondent altered its bargaining proposal by agreeing to a two year agreement, but with wage increases of from 8 per cent to 25 per cent for each of the two years. The final negotiating session to date was held on May 10th. At that time the Hotel made yet another monetary offer. As yet the respondent has not replied to this offer, and indeed Mr. Ireton indicated the respondent felt that negotiations could not realistically resume until such time as the Board made a determination with respect to this complaint.

8. This complaint arises out of the April 29th bargaining proposal put forward by the respondent, and in particular Mr. Ireton's role in formulating that proposal. The complaint as filed with the Board contends that Mr. Ireton acted in a manner that was both arbitrary and in bad faith in his failure to obtain the approval of the negotiating committee for the proposal, his pursuit with management of an agreement contrary to the expressed wishes and desires of the union membership, and his failure to vigorously pursue an agreement within the terms of his mandate.

9. It is an accepted part of our labour relations system that when a trade union puts forward a first wage proposal, it is generally only that, a first proposal which may have to be reduced one or more times before a collective agreement can be concluded. At the hearing the complainant himself acknowledged this to be the case. However, he indicated that his real complaint arose not so much out of the reduction in the respondent's wage proposal as out of the fact it accepted the notion of different percentage wage increases for the various classifications of employees. To put it in his own words, "I realize Mr. Ireton is not going to get a 30 per cent increase - but the key thing is that he was told to get an across the board increase."

10. There is no question but that the decision to move away from the respondent's original request for an across the board wage increase was made by Mr. Ireton. Mr. Ireton testified as to the reasons why he decided such a move should be taken. Having regard to the fact that the negotiations are not yet concluded, there would appear to be little benefit in detailing these reasons. Suffice it to say the Board is satisfied that the decision was not an unreasonable one in the circumstances, and that Mr. Ireton was at all times acting in complete good faith. Further, the evidence discloses that Mr. Ireton's decision was made after a consideration of what he thought to be all of the relevant considerations. This being the case, it cannot be said that his decision was made in an off-handed or arbitrary manner. Further there is no evidence to suggest that Mr. Ireton was acting in a discriminatory manner and indeed such was not contended by the complainant.

11. Having concluded that Mr. Ireton in reaching the decision to change the respondent's negotiating position did not act in a manner that was arbitrary, discriminatory or in bad faith, there still remains the complainant's contention that Mr. Ireton acted arbitrarily and in bad faith in making this decision without first obtaining the approval of the negotiating committee.

12. Mr. Ireton testified as to the manner in which the respondent has conducted its negotiations over the past 20 years. He stated that members of the negotiating committee have invariably served only in an advisory capacity, while the person charged with the prime responsibility for negotiations (formerly the business agent, more recently the president) has had the authority to make decisions as to negotiating strategy and to prepare counter-proposals in response to management offers. Once tentative settlement has been reached with management, however, then the final terms have always been presented to the membership employed in the hotel concerned for ratification. Mr. Ireton indicated that the rationale for having one person responsible for making decisions during the bargaining process was that the persons involved possessed the required understanding of conditions in the hotel industry as well as a knowledge of recently completed or concurrent negotiations at other hotels where the respondent holds bargaining rights.

13. With respect to the current round of negotiations at the Royal York, the complainant testified that following the negotiating session on April 16, 1976 at which management presented its original proposals, the members of the negotiating committee met with Mr. Ireton and that all present agreed that the Hotel's proposals were unacceptable. Further, it was understood by those present at the meeting that Mr. Ireton would draft a set of counter proposals to submit to management at the next negotiating session. It was admitted by Mr. Ireton that he drafted the counter proposals without the assistance of the members of the negotiating committee. He stated that during the course of these negotiations he saw the role of the committee members as being only to advise him. He also indicated, however, that he has adopted a practice of polling the members of a negotiating committee prior to actually reaching final agreement with management to ensure that the proposed terms are acceptable to them as a basis of settlement.

14. It is clear from the above that Mr. Ireton in formulating the respondent's negotiating proposals of May 10th acted within procedures followed by the respondent for some 20 years. There are many possible procedures open to a union in the conduct of its internal decision making process during negotiations. The fact that one or other procedure is adopted is not a factor in a determination as to whether or not the union has breached its duty of fair representation. However, what is of concern to the Board is the question of whether or not union representatives in following that procedure have acted in good faith and with honesty of purpose on behalf of the employees in the bargaining unit. (See the *Diamond "Z" Association* case [1975] O.L.R.B. Rep. Oct. 791.) In the circumstances of this case there is no indication that Mr. Ireton acted otherwise than in good faith and with honesty of purpose.

15. This decision is not to be taken as a finding that the complainant's views as to the proper negotiating position of the respondent are any less valid than those of Mr. Ireton, or indeed of any other employee within the bargaining unit. It is only a finding that in reaching its current negotiating position the respondent did not breach its duty of fair representation. If the complainant wishes to have the respondent change its negotiating position to accord

with his views, or if he desires a change in the decision making process of the respondent during negotiations, then those are changes which should be sought within the internal processes of the union.

16. This complaint is hereby dismissed.

1865-75-U Unifin Divison of Keeprite Products Limited, (Applicant), v. R.F. Nickerson, on his own behalf and on behalf of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (U.A.W.) and its Local 27 and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (U.A.W.) and its Local 27, (Respondents).

Collective Agreement – Whether Memorandum of Agreement a Collective Agreement – Effect of Employer not having ratified Agreement – Effect of Employer awaiting approval of Anti-Inflation Board – Effect of implementation by employer of certain of the agreed changes – Whether written ratification required.

BEFORE: Kevin M. Burkett, Vice-Chairman and Board Members H.J.F. Ade and P.J. O’Keeffe.

APPEARANCES: *D. W. Brady and G. Fenwick for the applicant; B. Chercover, G. Jennings and G. Flynn for the respondents.*

DECISION OF THE BOARD: June 18, 1976

1. This is an application brought under section 82 of the Act wherein the applicant seeks a declaration and a direction from the Board in respect of an alleged threat of an unlawful strike.

2. The evidence in this matter can be summarized as follows. The parties in the course of renegotiating a collective agreement applied for conciliation services, unsuccessfully attempted to arrive at a collective agreement in the officer’s presence and received a “No Board” letter from the Minister dated October 28, 1975. The union set a strike deadline of November 17, 1975 but the parties reached an agreement on November 15, 1975 and signed a memorandum setting out the terms of their agreement on that date. The preamble to the memorandum states as follows:

“The undersigned representatives of the company and union hereby unanimously *agree to recommend* the following settlement of their outstanding differences to their respective principals *for ratification*” (emphasis added).

The terms of the previous collective agreement were expressly continued except for the amendments which were detailed in the memorandum of settlement. Mr. G.T. Fenwick, the

general manager of the company, was a signatory on behalf of the company and Mr. R.F. Nickerson, an international representative of the respondent union, was a signatory on behalf of the union. The evidence establishes that on November 16, 1975, the union membership ratified the memorandum. The company was verbally notified of the union's ratification and implemented the terms of the memorandum on November 17, 1975 including the payment of retroactive wage adjustments back to October 5, 1975 and the adjustment to the base rates. In addition the union has subsequently relied on a number of new rights which were set out in the memorandum such as check-off and a revised grievance procedure. There is evidence that the company attempted to secure the agreement of the union on November 15, 1975 to jointly submit the terms of the memorandum to the then recently established Anti-Inflation Board for approval. The union refused. At no time has the company either verbally or in writing notified the union of its ratification of the November 15, 1975 memorandum.

3. Although the Anti-Inflation regulations had not been proclaimed at the time the parties entered into the memorandum of settlement the company had no doubt that they were subject to the guidelines and accordingly forwarded the details of the settlement to the Anti-Inflation Board under cover of a letter dated November 28, 1975. An exchange of correspondence then occurred between the company and the Anti-Inflation Board, the end result of which was a ruling from the Director General of the Compensation Branch of the Anti-Inflation Board dated January 19, 1976 giving the company 30 days (February 19, 1976) to work out with the union the details of a roll back to 11% (21¢ per hour). Mr. Nickerson of the union was not immediately available and as a result the company obtained a two week extension to the February 19, 1976 deadline but were informed that the effective date of the roll back would remain February 19, 1976. The parties finally met to discuss the Anti-Inflation Board meeting on March 1, 1976 and were unable to come to any agreement. The company then decided to proceed unilaterally and announced its decision to the workforce in a March 9, 1976 newsletter. Mr. Nickerson informed the company on March 11, 1976 that if it implemented the roll back the union would engage in a "legal strike" and set 11.30 a.m., Friday March 12, 1976 as the date for the strike. It was his contention that the formal collective agreement had never been signed. Mr. G.T. Fenwick, the company's general manager, testified that the company, although concerned with its potential liability for a penalty because of its failure to adhere to the Anti-Inflation Board ruling, decided, in the face of Mr. Nickerson's threat, not to roll back the wages of its employees. It was his evidence that the implied threat of a strike continues.

4. Mr. B. Chercover, counsel for the respondent, in the course of his cross-examination of Mr. Fenwick asked him to produce the covering letter of November 28, 1975 which was forwarded to the Anti-Inflation Board. Mr. Fenwick stated that he did not have it with him but would be pleased to forward it to the Board. Rather than adjourn the proceedings, arrangements were made to have the letter sent to Mr. Brady, counsel for the applicant, who in turn would forward it to Mr. Chercover for his consideration. The letter in question which was forwarded to the Board by counsel for the applicant on April 26, 1976, necessitated a further hearing in this matter in order to allow the applicant to adduce reply evidence and to allow the parties to make representations in respect thereof. The letter sets out the pertinent information with respect to the compensation improvements as provided in the memorandum of settlement which was signed on November 15, 1975. The letter commences with the following paragraph:

"On November 15, 1975, the Unifin Division of KeepRite Products Limited, Brantford, Ontario negotiated a thirteen month collective agreement with the United Automobile Workers Union representing our hourly paid employees. The settlement was *ratified* by the employees at a membership meeting on November 15th, 1975 and the wage adjustments were initiated effective November 17th, 1975. The previous collective agreement was signed in 1972 and expired on October 2nd, 1975." (emphasis added).

and concludes with:

"We request that the terms of this agreement be reviewed by the Anti-Inflation Review Board at the earliest possible moment. We would appreciate receiving a ruling on the acceptability of the terms of this settlement and if changes are indicated, your advise as to what specific terms must be changed. *As final ratification of this agreement by the Company is being withheld* until notification has been received from the Anti-Inflation Review Board, your reply is urgently required." (emphasis added).

5. Mr. Fenwick testified that he had full authority to bind the Unifin division of Keeprite Products Limited and that accordingly his signature on the memorandum bound the company to its terms and conditions. He testified that in his mind he only had to issue instructions to his staff to implement the agreement and that this would serve as confirmation of the company's ratification. He issued these instructions on November 17, 1975 and testified that until told by Mr. Nickerson on March 11, 1976 that the parties did not have a collective agreement it was his understanding that the two parties had entered into a collective agreement. In reply to Mr. Brady's question as to the meaning of the last paragraph of his November 28, 1975 letter, Mr. Fenwick stated that in the opinion of the company the Anti-Inflation legislation would automatically apply to the settlement and that the parties would be required by law to follow whatever Anti-Inflation Board ruling was superimposed on the contract and that the ratification referred to in the last paragraph of his letter was Anti-Inflation Board ratification. Although Mr. Fenwick expressed some difficulty with the precise meaning of the word "ratification" he admitted that its use in the first paragraph of the letter referred to the fact that "the employees had agreed."

6. The Board has no doubt that strike threats were made by Mr. Nickerson on or about March 11, 1976 and that these threats continue as of the date hereof contingent upon the company complying with the Anti-Inflation Board ruling. Before proceeding the Board must satisfy itself as to the existence of a collective agreement. Section 1(1)(e) of The Labour Relations Act defines a collective agreement as follows:

"'collective agreement' means an agreement in writing between an employer or an employers' organization, on the one hand, and a trade union that, or a council of trade unions that, represents employees of the employer or employees of members of the employer's organization, on the other hand, containing provisions respecting terms or conditions of employment or the rights, privileges or duties of the employer, the employers' organization, the trade union or the employees;"

7. The memorandum of settlement entered into by the parties on November 15, 1975 satisfies the statutory requirement of an agreement in writing signed by the parties. The parties are not required to sign the formal document. (See *Rossi's Bakery Limited* case [1966] OLRB Rep. July 266). The memorandum, however, was subject to ratification by both the company and the union and until this condition precedent was or is satisfied the parties are not bound by the terms and conditions set out in the memorandum (see *Crestile Limited* case [1967] OLRB Rep. April 41 and *Service Employees Union Local 210* case [1974] OLRB Rep. Oct. 739) and have not entered into a collective agreement. The Board must decide if in the absence of written confirmation the memorandum of settlement has been ratified. The Board recently dealt with a similar situation in the *Graphic Centre (Ontario) Inc.* case as yet unreported, dated May 18, 1976 wherein the Board stated at paragraph 13:

"In a number of cases the Board has been faced with situations where the parties have signed a memorandum of settlement subsequent to which confusion has arisen as to whether ratification has occurred. In certain of these situations the Board has responded to the extrinsic evidence and drawn the inference that ratification has occurred without there being signed evidence of this fact. (See *Versa Services Limited* case [1972] OLRB Rep. Apr. 306, *Service Employees Union Local 210* case supra, *Field-Price Limited* case [1973] OLRB Rep. Oct. 543). In other similar situations however the Board has stated that the parties must signify their ratification of the memorandum in writing (see *Marsland Engineering Limited* case supra, *Civil Service Association of Ontario* case [1971] OLRB Rep. Sept. 596) in order for there to be a collective agreement within the meaning of the Act. Although each case must be considered within its own circumstances a signed memorandum of settlement coupled with *compelling* evidence of ratification must be considered by the Board as evidence of a collective agreement within the meaning of the Act. Whereas a Memorandum of Understanding subject to ratification is not a collective agreement (see *John Inglis Co. Ltd.* case [1974] 1 Can. LRBR 481 (BC), evidence which clearly establishes that ratification has occurred elevates the memorandum to the status of a collective agreement within the meaning of the Act. Ratification satisfies the condition precedent thereby giving rise to what is then an unconditional agreement in writing (i.e. signed by the parties) on all outstanding matters. Although signed evidence of ratification is perhaps the most satisfactory evidence in this regard, the Board cannot ignore other evidence which supports the singular inference that ratification has occurred. It should be added that if the Board were to require signed evidence of ratification in all cases it would be denying the parties use of the equitable doctrine of estoppel in those situations where there is evidence of ratification, other than signed notification, which has been relied upon by one or other of the parties. (See *Garden City Laundry Limited* case [1970] OLRB Rep. May 240)."

8. Whereas the evidence of ratification need not necessarily be in writing, although this is obviously the most satisfactory evidence in this regard, the Board will look to other evidence which supports the inference that ratification has taken place. Although the implementation of the terms and conditions of a memorandum and the reliance by the parties on the conditions set out in a memorandum for a considerable period of time (four months in

this case) might in certain circumstances be sufficient to cause the Board to find that ratification has taken place and that a collective agreement exists, the evidence in this case taken in its totality is not compelling. Mr. Fenwick's letter of November 28, 1975 to the Anti-Inflation Board asks the Anti-Inflation Board to expedite its consideration of the November 15, 1975 memorandum because "final ratification of this agreement by the company is being withheld." The Board must conclude from a reading of the memorandum and from Mr. Fenwick's letter of November 28, 1975 that the company ratification was a precondition of agreement. The Board does not accept that Mr. Fenwick, the company's general manager, did not appreciate the significance of the term "ratification", a term which he had properly used in the first paragraph of the letter and further, the Board does not accept that his reference in the last paragraph was to Anti-Inflation Board ratification. The Board must find that the company did not notify the union that it had ratified the memorandum because in fact it had not. Whereas the implementation of the terms and conditions of settlement might in other circumstances support the inference that the company had ratified the memorandum, the Board must conclude that in the circumstances of this case the company implemented the terms and conditions to avoid a legal strike which was to have occurred on November 17, 1975.

9. This case illustrates the caution which must be exercised by the Board in concluding on the basis of extrinsic evidence that ratification has occurred. Certainly there are situations which warrant such a finding on the basis of evidence other than written notification. As stated in the Graphic Centre (*supra*) decision, however, the evidence must be "compelling" and must support the singular inference that ratification has taken place. Whereas the evidence in this case is clearly supportive of an inference other than ratification the Board would have been in a most difficult situation if the letter of November 28, 1975 had not been put before it. The parties to the collective bargaining process should be on notice that in the absence of written notification of ratification there must be other compelling evidence which supports the singular inference that ratification has occurred. A party risks a determination by either the Board or an arbitrator that it has not entered into a collective agreement if it does not notify the other side in writing of its ratification if the memorandum is subject to ratification. Unless there is some good reason for not doing so the parties should bring the bargaining process to a completion by signifying their ratification where ratification is required, in writing.

10. The Board must find in the circumstances of this case that the parties to this application have not entered into a collective agreement and accordingly the application is dismissed.

0493-76-U King Paving & Materials Division of the Flintkote Company of Canada Limited, (Applicant), v. Teamsters Local Union, No. 879 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Leonard O. Schultz, business representative, Teamsters, Local No. 879, (Respondents).

Collective Agreement – Strike – Whether term in collective agreement that employer would not require employees to cross a legal picket line provides an exception to the Act's strike prohibitions.

BEFORE: R. A. Furness, Vice-Chairman, and Board Members O. Hodges and J. E. C. Robinson, Q.C.

APPEARANCES: *Norman L. Mathews, Q.C. and H. E. MacPherson appearing for the applicant; Len Schultz appearing for the respondents.*

DECISION OF THE BOARD: June 18, 1976

1. The applicant has applied to the Board for relief under section 82 of The Labour Relations Act.
2. The applicant is the owner of a quarry located in the City of Burlington in the Regional Municipality of Halton, which quarry is known as the Nelson Crushed Stone quarry, and is also the owner of a quarry in the Regional Municipality of Niagara known as the Lincoln quarry. The employees of the Lincoln quarry are covered by a collective agreement dated the 5th day of May, 1975 and expiring on the 4th day of May, 1977, between Lincoln Quarries Division of the applicant, and the United Cement, Lime and Gypsum Workers, International Union, which agreement prohibits strikes or lockouts during the term of the agreement.
3. The Nelson Crushed Stone Division of the applicant and the United Cement, Lime and Gypsum Workers International Union, Local 494 were parties to a collective agreement dated the 15th day of June, 1974. This collective agreement expired on February 15, 1976, and the employees covered by this collective agreement are currently engaged in a lawful strike. Local 494 has maintained a picket line at the entrances to the Nelson Crushed Stone quarry. Local 494 on the 7th day of June, 1976 established a picket line at the entrance to the Lincoln quarry and as a result of this picket line, drivers who are members of the respondent trade union have refused to cross the picket line at the Lincoln quarry for the purpose of removing crushed stone and asphalt mixes. The asphalt mixes had been prepared at the Lincoln quarry by employees of the applicant who are not in any bargaining unit represented by Local 494 of the United Cement, Lime and Gypsum Workers International Union.
4. The picket line at the Lincoln quarry was temporarily removed during the afternoon of June 7th, 1976 and following such removal the drivers who are members of the respondent union resumed their work of removal of materials from the Lincoln quarry. On the afternoon of June 7th, 1976 a telegram was sent by the respondent Schultz to H. E. Macpherson, Vice-President of Construction of the applicant, which telegram read as follows:

“Please be advised that should pickets of N. C. S. appear on any quarry or pit involved in the present strike, the members of Teamsters Local Union 879 will refuse to cross.

Len Schultz, Bus. Rep Teamsters Local 879”

5. The Lincoln quarry is not involved in any strike as its employees are covered by an existing collective agreement which expressly forbids strikes. The picket line maintained by Local 494 of the United Cement, Lime and Gypsum Workers International Union was re-established at the Lincoln quarry on Friday, the 11th day of June, 1976, and upon its re-establishment the employees of the applicant who are covered by the collective agreement with the respondent trade union have refused to cross the said picket line and to carry on their normal duties as drivers for the applicant.

6. The applicant's employees at the Lincoln quarry have not engaged in a strike. The employees of the applicant at the Nelson Crushed stone quarry are from time to time picketing the Lincoln quarry and the applicant's employees who are covered by a collective agreement between the applicant and the respondent trade union have refused to cross the picket line at the Lincoln quarry. This refusal to cross the picket line by the drivers is occurring during the term of the latter collective agreement.

7. The respondents argue that by virtue of section 7 of the collective agreement between the applicant and the respondent trade union, the employees covered by this collective agreement are permitted to respect the picket line which has been established at the Lincoln quarry. Article 7 of this collective agreement provides:

“ARTICLE 7 – STRIKES and LOCKOUTS

7.1 During the term of this agreement the Union agrees that there shall be no strike and the employer agrees that there shall be no lock-out.

7.2 The words “strike” and “lockout” in the agreement shall mean “strike” and “lockout” as defined in the Ontario Labour Relations Act.

7.3 The Company will not require its employees to cross any picket line that has been established in accordance with the provisions of the Ontario Labour Relations Act and the Company has been advised by telegram from the Hamilton Office of Local 879 that such picket line has been so established.”

8. Having regard to the provisions of section 63 of The Labour Relations Act a strike engaged in by employees of the applicant who are covered by the collective agreement with the respondent trade union is unlawful. Article 7.1 provides in conformity with The Labour Relations Act that there shall be no strike during the term of this collective agreement and article 7.2 adopts the meaning of “strike” as defined in The Labour Relations Act.

9. Article 7.3 purports to create an exception that employees who are covered by this collective agreement will not be required to cross a picket line under certain circumstances. In our view article 7.3 contemplates a frame of reference which is not provided in The Labour Relations Act. There is nothing in The Labour Relations Act which provides for the establishment of picket lines. Hence it is not possible to ascribe any clear meaning to article 7.3. In any event in so far as article 7.3 purports to create exceptions to The Labour Relations Act it is invalid and without effect. As the Board stated in the *Belmont Plastering Company Limited* case, [1970] OLRB Rep. March 1459, the parties are not competent to enact private legislation which would take them beyond the provisions of The Labour Relations Act.

10. The Board finds that the conduct of the employees covered by the collective agreement between the applicant and the respondent trade union in refusing to cross the picket line constitutes a strike within the meaning of section 1(1)(n) of The Labour Relations Act and that having regard to the provisions of section 63 such strike is unlawful.

11. The Board finds that the respondent Leonard O. Schultz is an officer, official or agent of the respondent trade union and that he counselled or procured or supported or encouraged an unlawful strike. Having regard to the provisions of section 88(2) of The Labour Relations Act, any act or thing done or omitted by the respondent Leonard O. Schultz within the scope of his authority to act on behalf of the respondent trade union is deemed to be an act or thing done or omitted by the respondent trade union.

12. The irony of the instant application is that the employees of the applicant at the Lincoln quarry are crossing the picket line while the applicant's employees who are drivers are apparently expected to honour the picket line which has been established.

13. However, since the strike which is engaged in from time to time by such drivers is unlawful and there are no extenuating circumstances, the Board declares that such strike is unlawful and in the exercise of its discretion under section 82 of The Labour Relations Act makes the declaration set forth in paragraph fourteen.

14. The Board directs that:

- (a) The Teamsters Local Union No. 879 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, cease and desist from calling or authorizing or threatening to call or authorize an unlawful strike,
 - (b) The respondent Leonard O. Schultz cease and desist from counselling or procuring or supporting or encouraging an unlawful strike, and
 - (c) The respondent Leonard O. Schultz inform the members of the Teamsters Local Union No. 879, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America in the employ of the applicant that they are at liberty to continue working for the applicant at its Lincoln quarry in the Regional Municipality of Niagara regardless of the existence of picket line maintained by members of Local Union No. 494 of the United Cement, Lime and Gypsum Workers International Union.
-

1680-75-U Teamsters Union Local 1000, (Complainant), v. Pop Shoppe (Toronto) Limited, (Respondent).

Discharge For Union Activity – Whether technological changes reason for layoffs – Effect of recall offer to heavier job.

BEFORE: Kevin M. Burkett, Vice-Chairman and Board Members J.D. Bell and E. Boyer.

APPEARANCES: *Harold F. Caley and Al Lefort for the complainant; D.L. Brisbin for the respondent.*

DECISION OF THE BOARD: June 22, 1976

1. This is a complaint filed under section 79 of the Act alleging that subsequent to January 23, 1976 the five named grievors were dealt with by the respondent contrary to the provisions of sections 56, 58(a), (c), 62 and 70(c) of The Labour Relations Act in that the respondent laid off the grievors because they supported the union. The complainant requested that the Board direct that the grievors be called back to work and compensated for lost time.

2. The complainant trade union in this matter made application to be certified as the bargaining agent for all employees of the respondent at its East Toronto Plant save and except certain standard exclusions, on January 13, 1976 and therein requested that a pre-hearing vote be taken. The parties met with a Labour Relations Officer on January 23, 1976 for the purpose of dealing with the employer's objection to the naming of Michael Laroque on the voters' list. The parties agreed on January 23, 1976 that Michael Laroque was entitled to vote and that his name should appear on the voters' list. A vote was held on February 9, 1976 at the premises of the respondent in which the employees voted four to one in favour of the union. The complaint presently before the Board, which alleges the unlawful lay-off of Messrs. Laroque, O'Hara and Yussuf and Ms. Williams and Sparks, was filed on February 13, 1976. The union served notice on the company of its intent to bargain by letter dated February 16, 1976.

3. Mrs. A. Williams, one of the grievors, commenced employment with the respondent company in January of 1975. Her regular hours of work were 8 a.m. to 4 p.m. Monday to Friday, although it was admitted that she was subject to frequent lay-offs on Mondays and Fridays. Her primary function with the company was as an inspector. She was responsible for viewing the bottles as they proceeded from the washer to the filler and removing from the conveyor bottles which were not clean. She also worked the "start stop" controls for the bottle-washer. The company installed a device referred to as the "super eye" in mid-August of 1975 which mechanically removed from the line bottles which were not clean. The "super eye" was made operative in late August of 1975. The evidence establishes that between late August, 1975 and February 9, 1976, the date of the vote, Mrs. Williams continued to perform an inspection function, standing at the rear of the washer where she straightened and visually inspected the bottles before they reached the "super eye." It is important to note at this point that on the day of the vote both Mrs. Williams and Miss Sparks were engaged in a clean-up of the respondent's production facility.

4. Shortly before the notice of the certification application was posted Mrs. Williams was called to the office of Mr. Len Elliot, the plant manager, and asked to vote "No" in opposition to the union. It was also established that on the date of the vote Mr. Elliot said to her, as she was working, "remember to put your 'X' at the No." Mrs. Williams testified that she indicated to Mr. Elliot that she would vote against the union. Mr. Elliot admitted that he had had these conversations with Mrs. Williams when he had hired her daughter and he hoped that she would do a favour for him in return. Immediately after the ballots had been counted Mrs. Williams was summoned to Mr. Elliot's office and in the presence of Charlie Campisi, the foreman and Mr. J. Zavitz, the General Manager of the company, she was asked by Mr. Elliot why she had let him down; why she had voted in favour of the union. It was her evidence that Mr. Zavitz threatened to close the business and told her she would have to find another job. Mr. Zavitz denied these allegations. Mr. Elliot testified that he did not hear what Mr. Zavitz had said and Mr. Campisi, the other person present, was not called to testify. Mr. Elliot testified that he felt that both Mrs. Williams and Miss Sparks "double-crossed" him, that they were "dishonest" and that he didn't like to associate with this type of person. The evidence establishes that Mr. Elliot told Mrs. Williams to punch out and that she did not return to work until Tuesday, February 17, 1976 at which time she was no longer on the conveyor but rather was assigned to the back of the soaker where she was required to load empties into the soaker.

5. Millicent Sparks, who is the daughter of Mrs. A. Williams, commenced work for the respondent employer in October of 1975. Her normal hours of work were 8 a.m. to approximately 4.30 p.m. Monday to Friday although it was not unusual for her to be laid off for lack of work on Mondays and Fridays. She was responsible for the inspection of full bottles as they left the filler. On the day of the vote Miss Sparks was engaged in the painting and clean-up of the respondent's production facilities. Miss Sparks testified that on the day of the vote Mr. L. Elliot came to her in the morning and told her to mark an 'X' in opposition to the union. She testified that she voted for the union and that she was called to Mr. Elliot's office after the ballots had been counted and asked by Mr. Elliot why she had let him down. She was then directed by Mr. Elliot to punch out. She testified that as she went to punch out Charlie Campisi, the foreman, told her there was more work to be done. Miss Sparks has not returned to work since February 9, 1976 although she was asked to report for work on March 8, 1976 but refused because the job offered to her was the same job which had proved too difficult for her mother.

6. Mr. T. Ohara commenced work with the respondent company in September of 1975 and worked the hours of 7.30 a.m. to 4.30 p.m. Monday to Friday as a loader of the bottle washer and as a cast stacker. He had been subject to lay-offs on Mondays and Fridays as had the other grievors. On January 23, 1976, ten days after the filing of the application for certification and the day of the setting of the voters' list, Mr. Ohara was laid-off for lack of work and was not contacted by the Company until February 19, 1976. Mr. L. Elliot called his residence on Thursday, February 19, 1976 and left a message with Mr. Ohara's sister asking Mr. Ohara to report for work the next day. Mr. Ohara did not receive the message and was contacted by Mr. Elliot on Friday, February 20, 1976 and told to report to work on Monday, February 23, 1976. The evidence establishes that Mr. Ohara was the union contact inside the plant and played a role in the signing of the other grievors. He himself signed a union card on January 8, 1976, and although laid-off at the time of the vote came to the company premises on February 9, 1976 and cast his ballot in favour of the union.

7. Mr. Yussuf, the fourth of the grievors, also commenced work in January 1975 as a loader of the bottle washer and a case stacker working 7.30 a.m. to 4.30 p.m., Monday to Friday. He also had been previously laid-off for up to two days at a time, usually Mondays and/or Fridays. He was offered clean-up and painting work for February 9, 1976, the day of the vote but declined. He arrived at the respondent's premises shortly after 12 noon but was asked by Mr. Elliot to wait elsewhere until the 1p.m. vote. He was called at home after the ballots had been counted and told that he would not be working the next day and that he should pick up his cheque on Thursday, February 22, 1976. He went to the plant to pick up his cheque on the Thursday and testified that the line was running. The evidence of the respondent's witnesses substantiated the fact that indeed the company produced during the week of the vote. Mr. Yussuf was called by Mr. Elliot on Friday, February 13, 1976 and asked to report for work on Monday, February 16, 1976.

8. The fifth of the grievors, Mr. M. Laroque, commenced employment with the respondent on January 12, 1976 working with Mr. Ohara and Mr. Yussuf on the bottle washer. He signed a union card on January 12 at Tim Ohara's home, was laid-off on January 23, 1976 and did not vote, although eligible to do so, because he was in Sudbury on February 9, 1976. He was called back to work on March 5, 1976.

9. Mr. J. Zavitz, the General Manager of the respondent company, was called to give evidence. He testified as to the improvements to the company's production facilities which had been undertaken within the past year. These included the installation of a new bottle washer in August, 1975, the installation of a new case packer and an electronic eye in January of this year and finally the completion of the wiring of the case packer and the relocation of the bottle washer control to the filler which was completed on February 10, 1976. He testified that the impact of these improvements was to reduce the company's manpower requirements by 1½ persons and that these savings had been projected in the company's "operating plan" which had been subsequently approved by the parent company. The document outlining the operating plan and the recommendation for reduced manpower costs was not put in evidence. The evidence establishes that the changes which took place in February of 1976 did not affect the company's manpower requirements and that prior to February of 1976 none of the employees had been told that they might be laid-off as a result of these changes. Mr. Zavitz testified that upon receiving notice of the application he retained counsel and that on the advice of counsel he instructed Mr. Elliot to keep employee records with respect to such matters as absenteeism, lateness, insubordination etc. The company had been lax in these matters prior to the certification application and had not kept employee records. Mr. Zavitz admitted that he was surprised by the outcome of the vote (4 to 1 in favour of the union) because he had anticipated that the two women (Mrs. Williams and Miss Sparks) would vote against the union as would Mr. Currello, the fork lift driver, thereby defeating the union 3 - 2. He also admitted that he was aware that Mr. Elliot had spoken with the two women prior to the vote. He denied having threatened to close down the plant after the vote but acknowledged that he was present when the two women were called in and laid-off by Mr. Elliot.

10. The evidence establishes that following the vote the company operated its production facilities with no "bargaining unit" personnel other than the fork lift operator, Mr. Currello for the first time in its history. The company produced on February 11, 12 and 13, 1976 using Lyman Halahan who had come from the West plant the previous week in order to replace Miss H. Williams (not to be confused with Mrs. A. Williams) as the filler opera-

tor, Mr. J. Wild who had come from the West plant as a Management Trainee on February 2, 1976, Charlie Campisi the foreman, Mr. Wayne Little ostensibly hired as a sales assistant, (the company requires its sales trainees to spend time in the production area) and Mr. Elliot the plant manager. During the subsequent period a Bruce Duncan was called in to work on the line. He had worked summers for the respondent and because of the teachers' strike he was available for work. The company contracted out the painting and clean-up work which was being done by Mrs. Williams and Miss Sparks immediately before the vote.

11. This complaint was brought before the Board under the provisions of section 79 of the Act. Section 79(4a) requires that in complaints of this type the burden of proof or legal burden rests upon the employer. The employer must establish on the balance of probabilities that he did not violate the Act. The Board has long held that in complaints such as this anti union motivation does not have to be the sole reason or even the predominant reason giving rise to the alleged unlawful activity for the Board to find that the Act has been violated. See the *Bushnell* case [1974] O.R. (2d) at page 442, later upheld, where the Ontario High Court in considering a comparable section of the Canada Labour Code upheld this interpretation and found that if, "the evidence satisfies it beyond a reasonable doubt that membership in a trade union was present in the mind of the employer in his decision to dismiss, *either as a main reason or as one incidental to it or as one of many reasons regardless of priority* section 110(3) of The Canada Labour Code has been transgressed." These proceedings are concerned with anti union motivation and are not a substitute for just cause proceedings. The Board is not concerned with the fairness of the employer's actions but rather with the motivation underlying the employer's actions. If the Board is satisfied on the balance of probabilities that the activity was either in whole or in part motivated by "anti-union animus" or having regard to the shift in the burden of proof, if it is not satisfied that the employer acted without anti-union motive the Board must find in favour of the complainant. (See *Barrie Examiner* [1975] OLRB Rep. Oct. 745, *Fielding Lumber* [1975] OLRB Rep. Sept. 665 and *Corporation of the City of London* [1976] OLRB Rep. Jan. 990).

12. In cases such as this the Board is frequently required to proceed by a process of inferential reasoning and having regard to all the circumstances draw its conclusions with respect to the real reasons underlying the complained of activity. The Board has reviewed all the evidence in this matter and has concluded that the lay-off of the five grievors was at least in part if not solely motivated by their trade union activity. In the face of laying off or not recalling its production employees immediately subsequent to the vote and thereupon producing 4,000 to 5,000 cases of pop with non-bargaining unit employees (with the exception of Mr. Currello) and then sub-contracting the painting and clean-up work which was being performed by Mrs. Williams and Miss Sparks on the day of the vote, the company, notwithstanding the legal burden, was required to come forth with a credible explanation which would negate the adverse inferences which would logically be drawn from these facts. The evidence, however, substantiates the inference of company impropriety. Mr. Elliot with the knowledge of Mr. Zavitz approached the two women, Mrs. Williams and Miss Sparks, and attempted to convince them to vote against the union. Mr. Elliot and Mr. Zavitz were certain that Mr. Currello would vote against the union and his vote along with those of the two women would, in their minds, be sufficient to defeat the union. Immediately upon determining that the two women had voted for the union they were individually summoned to Mr. Elliot's office and rebuked for having let the company down and were thereupon laid-off even though there was work to be done. Mr. Yussuf was phoned and told not to come in and Messrs. Ohara and Laroque were not recalled. Mr. Elliot testified that

there was need for a "cooling-off" period following the vote. There can be no doubt that the trade union activity of the grievors precipitated the lay-off following the vote.

13. The Board must now concern itself with the lay-off of Messrs. Ohara and Laroque on January 23, 1976. The Board has concluded that their lay-offs during the period January 23 to February 9, 1976 were also motivated, at least in part, by anti union sentiment. The Board has arrived at this conclusion based on preponderance of circumstantial evidence. The evidence of Mr. Zavitz and Mr. Elliot and their activities both subsequent to and following the vote establish that they, as officials of the respondent company, were acutely concerned with the outcome of the vote. They were sufficiently concerned to have approached the two women in an attempt to arrange a 3 - 2 vote against the union. It can safely be assumed that they had determined that the two women were the most likely to be swayed by Mr. Elliot's advances and had not hesitated to approach them. They were "shocked" by the outcome of the vote which revealed that the two women had voted in favour of the union. Mr. Ohara, the prime mover behind the union, and Mr. Laroque, a very short service employee, were laid off some two weeks before the vote on January 23, 1976, the same day as Mr. Laroque's name was confirmed on the voters' list. The company did not satisfactorily explain these two week lay-offs other than by referring to a "lack of work." In the face of the company's obvious concern with the outcome of the vote the Board must conclude that these atypically prolonged lay-offs for lack of work, which commenced on the day the voters' list was set, were at least in part motivated by a desire to affect the outcome of the vote. Indeed, Mr. Laroque did not appear to vote having left for Sudbury following his lay-off.

14. The Board must address itself to the offer of recall which was made to Miss Sparks on Friday, March 5, 1976. Miss Sparks was asked to return to the company effective Monday, March 8, 1976 as a loader of the bottle washer; the same job which had proven physically difficult for her mother. Miss Sparks refused to return as a loader citing the difficulty of the job as recounted to her by her mother. Before dealing with the offer of recall the Board states that the failure of Miss Sparks to return to work when given the opportunity to do so must affect the amount of compensation which might otherwise be owed to her. In refusing to return to work Miss Sparks forfeited her entitlement to compensation beyond March 8, 1976. Her refusal, however, does not affect her right to return if the Board finds that the offer to return to a job other than her own was part of a pattern of anti-union conduct by the employer. Whereas the Board is satisfied that the operating changes implemented by the company did away with Miss Williams' job as the "pre" inspector and operator of the bottle washer control switch the Board is not satisfied that these changes were necessarily responsible for the disappearance of Miss Sparks' job. Miss Sparks performed the "post" inspection job after the installation of the super eye up to and including Friday, February 6, 1976 and was never told that her job might disappear. Furthermore the electrical work which was completed on February 10, 1976 did not affect her function. The Board must find therefore that the offer to Miss Sparks that she return as a loader, an acknowledged heavier job, was at least in part motivated by her trade union support and is evidence of a continuing pattern of employer anti union activity. The Board while recognizing that Miss Sparks does not have a proprietary right to a particular job must protect her from discrimination or other conduct which the Board finds has been motivated by anti union "animus." The Board directs therefore that Miss Sparks be reinstated into a job at the company's East end plant of a least equal rate which she is physically able to perform. In addition the Board directs that if the post-inspection job is filled at some future date that Miss Sparks be given first opportunity to perform that job.

15. The Board finds, therefore, that the lay-off of each of the five grievors was in violation of section 58(a) and (c) of the Labour Relations Act. The Board orders that Messrs Yussuf, Ohara and Laroque and Mrs. Williams be compensated for the period of their respective lay-offs and that Miss Sparks be compensated for the period commencing with her lay-off on February 9, 1976 up to and including March 5, 1976. In order to assist the parties in determining the exact amount of compensation the Board comments *firstly*, that in view of the regular pattern of lay-off prior to the vote on February 9, 1976 the compensation calculation should relate to the number of hours the company operated its production facilities during the respective lay-offs and, *secondly* because of the fact that the company contracted out painting and clean-up work which was being done by bargaining unit employees at the time of the vote the compensation to the grievors (exclusive of Mr. Yussuf who refused this work) should also reflect the man hours required to complete the painting and clean-up. The Board will remain seized of this matter in the event difficulties arise in implementing its orders.

1890-75-U Teamsters Union Local 1000, (Complainant), v. Pop Shoppe (Toronto) Limited, (Respondent).

Discharge For Union Activity – Effect of finding both just cause and anti-union motivation – Effect of previous finding of anti-union motivation in related case – Effect of company changing its response to employee discipline following application for certification.

BEFORE: Kevin M. Burkett, Vice-Chairman and Board Members J.D. Bell and E. Boyer.

APPEARANCES: *Harold Caley and A. Lefort for the applicant; D.L. Brisbin for the respondent.*

DECISION OF KEVIN M. BURKETT VICE-CHAIRMAN AND BOARD MEMBER E. BOYER: June 24, 1976

1. This is a complaint filed under section 79 of the Act, in which the complainant alleges that the two grievors, Mr. T. Ohara and Mrs. A. Williams were dealt with by the respondent contrary to the provisions of sections 3, 56, 58, 61, 62 and 70 of The Labour Relations Act. The complainant alleges that the two grievors were dismissed because of their support for the union. This complaint follows another involving the same parties which was filed on 13th February, 1976 (Board File No. 1680-75-U) wherein the complainant alleged that the lay-off of five grievors (including Mr. Ohara and Mrs. Williams) was contrary to the Act. The earlier complaint was heard by the same panel of the Board and the parties to the instant complaint agreed that the Board could apply the evidence adduced in the earlier hearing to its determination in this matter.

2. The evidence establishes that the company attempted to contact Mr. T. Ohara late in the afternoon of Thursday February 19, 1976 to ask him to report for work on Friday, February 20, 1976. Mr. Ohara could not be reached but was asked to report back to work on Monday, February 23, 1976. Mr. Ohara, who had been laid-off on January 23,

1976, reported back to work on Monday, February 23, 1976 and worked a full shift. Mr. Ohara failed to report to work on either Tuesday, February 24 or Wednesday, February 25, 1976 and as a result Mr. J. Wild who had replaced Mr. Elliot as plant manager contacted Mr. Ohara and, by his evidence, told Mr. Ohara that he was being suspended for two days because of his failure to report to work. A memorandum dated Wednesday, February 25, 1976 from Mr. Wild to Mr. Ohara confirming the suspension was put into evidence. Mr. Ohara denied ever having received the memorandum and testified that he was told that he was not needed for the rest of the week. The memorandum directed Mr. Ohara to report for work on Monday, March 1, 1976. Mr. Ohara did not report for work on Monday March 1, 1976 but rather phoned the company at 7.45 a.m., by his evidence. (at 8.05 a.m. by the evidence of Mr. Wild) in order to notify the company that he was helping his mother to move. Mr. Ohara testified that he had been called the preceding Friday and asked to report on the Monday but had told the company at that time that he might not be available. Mr. Wild testified that at 8 a.m. on Monday March 1, 1976 he noted that Mr. Ohara had not reported for work and asked his foreman, Mr. Campisi, if he had called in. Mr. Campisi answered that he had not and thereupon the phone rang. Mr. Campisi took the call which was from Mr. Ohara and reported back to Mr. Wild. Mr. Wild then contacted Mr. Zavitz at head office, as he had done the week before prior to imposing the 2 day suspension, and asked if he could terminate Mr. Ohara. It was his recommendation that Mr. Ohara be terminated. Mr. Wild's memo to file on this matter which was put into evidence states:

"At approximately 9.30 a.m. our head office (J. Zavitz) called and advised me that owing to the fact that Tim Ohara was absent from work today and no notice was received by Mr. Campisi prior to the 8 am. starting time his employment is terminated and a letter to this effect is in the mail to him from head office."

Mr. Ohara was notified by telephone of his termination by Mr. Wild. It should be noted at this point that the company commenced keeping discipline records shortly after receiving notice of the application for certification and that as a result Mr. Ohara's work record was documented as was that of Mrs. Williams.

3. Mrs. A. Williams who had been laid-off by the company immediately following the vote on February 9, 1976 was asked to return to work on Tuesday, February 17, 1976. Mrs. Williams was sick on the 17th but reported for work on Wednesday, February 18, 1976. She was absent again on February 19, 1976 due to illness and as a result was asked to produce a doctor's certificate. Mrs. Williams returned to work on February 23, 1976 and worked that day and the following two days. Mrs. Williams who before her lay-off had been working at the rear of the bottle washer inspecting and straightening bottles and operating the start-stop control for the washer was given a loading job on her recall. She was required to load cases of empties on the line and to stack the empty skids. Mr. Wild admitted that it was "heavy work for a woman" but stated that there was nothing else because of the moving of the bottle washer control to the filler apparatus. On Wednesday, February 25, 1976, Mrs. Williams refused to move the empty skids from behind the washer and thereby precipitated a confrontation between herself and Messrs. Campisi and Wild. Mr. Wild stopped the production line and asked Mr. Campisi to instruct Mrs. Williams as to the full extent of her job responsibilities and to then obtain an affirmative commitment from Mrs. Williams of her willingness to perform the full job. Mrs. Williams, after some equivocation, agreed to perform all the duties. The result of this incident was a memorandum from Mr. Wild to

Mrs. Williams re: Notice of Insubordination, where Mrs. Williams was advised "that further acts of insubordination or similar conduct will result in discipline which may include dismissal." Mrs. Williams did not report for work the following day, Thursday, February 26, 1976. The company was advised by telephone at about 8.30 a.m. that Mrs. Williams was sick. She did not call-in or report to work on Friday, February 27, 1976 or on Monday, March 1, 1976. She phoned Mr. Campisi, the foreman, at 7.45 a.m. on Tuesday, March 2, 1976 and advised him that she had to take her daughter for a vaccination. When Mrs. Williams had not called-in or reported for work by 8.30 a.m. the next morning, March 3rd, Mr. Wild attempted to reach her by phone. He was unable to do so because of a disconnected number and thereupon contacted head office and proceeded to draft a termination letter which was sent to Mrs. Williams from the head office.

4. Section 79 (4a) of The Labour Relations Act places the legal burden upon the employer in complaints such as the one before us, to satisfy the Board, on the balance of probabilities, that it has not violated the Act. In order for the Board to find that there has been no violation of the Act it must be satisfied that the employer's actions were not in any way motivated by anti union sentiment; the employer's actions must be devoid of "anti union animus". (See the *Bushnell* case [1944] OR (2d) at page 442). The employer cannot engage in anti union activity under the guise of just cause or under the guise of business reasons. Regardless of the viable non-union reasons which exist the Board must be satisfied that there does not co-exist in the mind of the employer an anti union motive. The employer best satisfies the Board in this regard by coming forth with a credible explanation for the impugned activity which is free of anti union motive and which the evidence establishes to be the only reason for its conduct. (See *Barrie Examiner* [1975] OLRB. Rep. Oct. 745 and *The Corporation of the City of London* [1976] OLRB Rep. Jan. 990).

5. In cases such as these the Board is very often required to render a determination based on inferential reasoning. An employer does not normally incriminate himself and yet the real reason or reasons for the employer's actions lie within his knowledge. The Board, therefore, in assessing the employer's explanation must look to all of the circumstances which surround the alleged unlawful acts including the existence of trade union activity and the employer's knowledge of it, unusual or atypical conduct by the employer following upon his knowledge of trade union activity, previous anti union conduct and any other "peculiarities". (See *National Automatic Vending Co. Ltd.* case 63 CLLC 16,278). If, having regard to the circumstantial evidence, the Board cannot satisfy itself that the employer acted without anti union motivation, the Board must find that the employer has violated the Act. These determinations, however, are most difficult and require an incisive examination of all the evidence. Not only must the Board "see through" the legitimate reasons which often co-exist with the unlawful, but at the same time the Board must be capable of distinguishing between the unlawful and the unfair. The Board cannot find, and neither should it automatically infer, that an employer who has engaged in conduct which is unfair has violated the Act even if the unfair treatment is coincidental with an organizing campaign. However, because of the nature of the proceedings and the frequent requirement for inferential reasoning the Board would be delinquent if it did not consider, for purposes of drawing an adverse inference, unfair treatment during an organizing campaign of itself or in conjunction with the other circumstantial evidence. The Board, therefore, must be acutely sensitive to all of the circumstances and must not be unduly swayed by either the co-existence of unfair treatment or by the co-existence of legitimate reasons for the employer's conduct in determining if The Labour Relations Act has been violated.

6. The Board found Mr. Ohara to be a most unsatisfactory witness whose testimony in the main lacked credibility. The Board has reviewed the evidence as it relates to Mr. Ohara and is satisfied that the employer had "just cause" for his discharge. The Board is not satisfied, however, that the company was devoid of anti union sentiment when it decided to terminate Mr. Ohara. *Firstly*, the Board has viewed the company's conduct in light of its previous finding of anti union activity in the lay-off of the five bargaining unit employees on January 23rd and February 9th respectively. Its decision to lay-off the bargaining unit employees in clear violation of the Act casts a shadow upon its conduct in the immediately following period. *Secondly*, the Board has compared the company's response to absenteeism in the period prior to unionization to its response after certification and has noted a marked difference. Whereas prior to the advent of the union the company was, in the words of Mr. Elliot, "very loose" with respect to absenteeism and lateness (as evidenced by the time cards) the company not only kept records of these matters in the period following certifications but terminated the two grievors because of their absenteeism. The keeping of employee records in the period following certification is a neutral activity; it does not point either to or against anti union motive and can be considered as a normal precaution to be undertaken by a company which has sought legal advice. If, however, the conduct of the company which is ostensibly based on the employee's record is markedly different than its conduct prior to the keeping of records (i.e. prior to the advent of the union) then such conduct is to be viewed with suspicion. If, in the instant case, the employer had been very strict with respect to absenteeism and lateness in the period preceding the union, then its continued strict approach coupled with the keeping of employee records would not be viewed with suspicion. In the instant case, however, the employer's termination of Mr. Ohara is not consistent with its historical approach to absenteeism and the only intervening factor which can account for the change is the union activity of the bargaining unit employees. *Thirdly*, and perhaps most importantly, Mr. J. Zavitz, the company official who made the decision to terminate Mr. Ohara as evidenced in Mr. Wild's memo to file (see paragraph 2 of this decision), did not appear to testify. Although Mr. Wild made the recommendation it was Mr. Zavitz who made the actual decision and having regard to his compliance in the unlawful lay-off of the company's bargaining unit employees and his obvious displeasure at the certification of the trade union, the Board is not satisfied that in making the decision to terminate Mr. Ohara he was not at least in part motivated by a desire to rid the company of a union supporter. The Board would note at this point that the warning memorandum which was forwarded to Mr. Ohara is not sufficient to erase all doubts as to the true motivation of the company. It supports the company's contention of just cause but at the same time is itself to be viewed suspiciously because of the company's previous lax approach to these matters.

7. Having reviewed all of the evidence as it relates to the termination of Mr. Ohara, the Board is not satisfied that his termination was without anti union motivation. Although he exhibited a blatant disregard for his responsibilities as an employee, the evidence when viewed in its entirety, does not satisfy the Board that his unsatisfactory behaviour was the sole reason for his termination. The Act requires that the respondent must establish on the balance of probabilities that it did not violate the Act. It must satisfy the Board that the termination was unrelated to union activity. The respondent has failed to satisfy the Board in this regard and the Board must find, therefore, that the respondent violated sections 58(a) and (c) of The Labour Relations Act in terminating the employment of Mr. T. Ohara. Accordingly the Board directs that Mr. Ohara be reinstated into the employ of the company and that he be compensated for his lost wages. The purpose of compensation in cases such

as this one, however, is not to punish or penalize the company but to make the grievor "whole"; to leave the grievor no worse off than he would have been if the violation of the Act had not occurred. The Board, therefore, in directing that compensation be paid to Mr. Ohara must take into account not only the historical pattern of lay-off but also Mr. Ohara's disregard for regular attendance. Accordingly the Board directs that the amount of compensation which is to be paid to Mr. Ohara be based on *one half* the number of hours the company operated its production facilities from the date of his termination to the date of his reinstatement, inclusive.

8. The Board is satisfied that there existed just cause for the termination of Mrs. Williams. The evidence when considered in its totality, however, does not satisfy the Board that Mrs. Williams' termination was devoid of anti union motivation. The considerations which were enunciated in paragraph 6 vis-a-vis the termination of Mr. Ohara are equally applicable in the case of Mrs. Williams. The company's conduct in laying-off Mrs. Williams in February because of her "doublecross" was in blatant violation of the Act and casts suspicion on the subsequent conduct of the company. The subsequent conduct is itself suspicious because it is not consistent with the company's approach to employee discipline in the period prior to the application for certification, and finally Mr. Zavitz, who made the ultimate decision to terminate, did not appear to testify. The evidence, when taken in its totality, does not convince the Board that the company acted without anti union sentiment. Before considering a proper remedy in the case of Mrs. Williams the Board must first address itself to the issue of the job responsibilities to which she was assigned upon her recall.

9. The evidence establishes that Mrs. Williams was working behind the bottle washer inspecting and straightening bottles and operating its start-stop control before the application for certification. She performed these duties subsequent to the installation of the "super eye"; however, during the early part of February the start-stop control was moved from the back of the bottle washer to the filler apparatus where it could be operated by the filler operator. These changes were completed on February 10, 1976. The company attributes its assignment of heavier duties to Mrs. Williams to these modifications. The installation of the "super eye" and the placement of the start-stop bottle washer control near the filler machine objectively support the contention of the company that these changes did away with Mrs. Williams' job. The company offered her work as a loader which proved to be difficult for her, although it is to be noted that she agreed to carry on. Mr. Elliot testified, however, that there are women in the company's other plants who do similar work. His evidence was not contradicted and the Board did not have the benefit of a first hand account from Mrs. Williams who did not appear to testify. In addition the company provided a credible explanation for its failure to train Mrs. Williams as a filler operator. Although the company had planned the changes which were completed on February 10, 1976 in mid 1975, Mrs. Williams was never notified that she might lose her job or be required to perform heavier work as a result of these changes. The treatment of Mrs. Williams by the company in this regard can clearly be termed unfair. The Board is satisfied, however, that this unfair treatment when viewed in conjunction with the other job related evidence does not support a finding that the reassignment of Mrs. Williams constitutes a violation of the Act.

10. The Board finds, therefore, that the company violated the Act in terminating the employment of Mrs. Williams. Accordingly, the Board orders that Mrs. Williams be reinstated in the employ of the company and that she be compensated for her lost wages. The same considerations with respect to the amount of Mr. Ohara's compensation as outlined in

paragraph 7 also apply in the case of Mrs. Williams who likewise exhibited a disregard for regular attendance. The Board directs therefore that the amount of compensation which is to be paid to Mrs. Williams be based on *one half* the number of hours the company operated its production facilities from the date of her termination to the date of her reinstatement, inclusive.

11. The Board will remain seized of this matter in the event difficulties arise with the implementation of its direction in this matter.

DECISION OF BOARD MEMBER J.D. BELL:

1. The Board finds that the respondents had just cause to terminate the grievors, Mr. Ohara and Mrs. Williams. With this I agree and I find they were terminated for this reason.

2. However, the majority has gone beyond this and says that because of an anti union motivation finding in a previous case i.e. Board File No. 1680-75-U, the Board will nullify their termination for cause and direct the respondent to re-employ the grievors and further to reward them for their misconduct by directing they are to receive payment for 50% of the hours they were off.

3. The Board finds the evidence of Mr. Ohara lacking in credibility and Mrs. Williams did not appear to give evidence at this hearing. There was no evidence of an anti union motive in this particular incident.

4. Therefore, it is my opinion that the Board must dismiss this complaint.

1497-75-M The International Association of Heat and Frost Insulators and Asbestos Workers, Local 95, (Applicant); v. **Sovereign Insulation Canada Limited**, (Respondent).

Arbitration – Discharge – Whether employer has onus to show just cause – Whether union officer's absence from work while attempting to end an illegal strike just cause.

BEFORE: Ian C.A. Springate, Vice-Chairman and Board Members F.W. Murray and H. Simon.

APPEARANCES: *Henry M. Pollit, Alexander Taggart, Ron Violette and Don W. McIntyre for the Applicant; Roy D. Macgillivray, Joe S. Alcantara and Lloyd Frost for the Respondent.*

DECISION OF THE BOARD: June 2, 1976

1. This is a referral of a grievance to arbitration pursuant to Section 112(a) of The Labour Relations Act.

2. The grievance giving rise to this application requested the reinstatement with full compensation of six persons allegedly discharged by the Respondent on or about November 25, 1975 without just cause. At the hearing Counsel for the Applicant informed the Board that the Applicant was not pursuing the grievance in so far as it related to five of these persons, namely Carl Wright, Wayne Jalbert, J. Voisin, I. Dafoe and B. Bondrea. Further, with respect to the one remaining person, Ronald Violette, Counsel indicated that the Applicant was no longer seeking his reinstatement but only compensation for lost wages.

3. This application was filed with the Board on December 31, 1975. Rather than have it heard forthwith, however, the parties, for reasons best known to themselves, requested a series of adjournments. The hearing was finally held on May 4, 1976.

4. The parties had been signatories to a collective agreement which expired on or about April 30, 1973. In the course of negotiating for a renewal of this agreement the matter was referred to conciliation. On or about July 17, 1973 the Minister of Labour advised the parties that he did not consider it advisable to appoint a conciliation board. At some point after this, the parties agreed – apparently verbally – to comply with the terms of a collective agreement then in effect between the Applicant Trade Union and the Master Insulators' Association of Ontario, Incorporated (hereinafter referred to as "The Master Insulators' Association"). This agreement was itself replaced by a new agreement dated November 27, 1975 and effective from July 7, 1975 to April 30, 1979. On February 17, 1976, subsequent to the filing of the application but before the matter came on for a hearing, the parties to this application signed a collective agreement to be effective from July 7, 1975, until April 30, 1979. The effect of this agreement is to bind the parties to the terms and conditions of the current collective agreement between the Applicant and The Master Insulators' Association. The agreement between the parties provides that all of its terms, including those contained in the agreement between the Applicant and The Master Insulators' Association, both monetary and non-monetary, are effective as of July 7, 1975. At the hearing the parties expressly agreed that the matter was properly before the Board and that the Board should determine the grievance under the terms of their current collective agreement. This the Board proposes to do.

5. As described in more detail below, the events leading up to this grievance involved a work stoppage of a number of the Respondent's employees on November 26 and 27, 1975. Whether or not the work stoppage was in violation of the terms of an existing collective agreement or contrary to the Labour Relations Act was not argued before the Board and, indeed, a finding in this regard is not required for a determination of the grievance. It is, however, of some importance that at all relevant times it was assumed by the parties and by the individuals most directly involved that a collective agreement was in effect. Both Mr. Violette and Lloyd Frost, the Respondent's superintendent on the work site, stated specifically at the hearing that at the time they were of the opinion that the work stoppage was in violation of an existing collective agreement.

6. The Respondent is based in the City of Thunder Bay. The Applicant has its offices in Toronto. The events giving rise to this application occurred in Sault Ste Marie, where at the time the Respondent had some thirty of its employees engaged in doing insulation work for the Algoma Steel Company. Mr. Frost was the most senior representative of the Respondent on the work site. Mr. Violette was the Applicant's job steward and, as such, was the most senior officer of the Applicant on the job site.

7. On the afternoon of Wednesday, November 25, 1975 four or five of the Respondent's employees on the work site refused to do any work, gathering instead in one of the construction trailers on the site. It is clear from the evidence that their action constituted a strike within the meaning of Section 1(1)(m) of the Labour Relations Act. The reasons given by these employees for their refusal to work was two-fold. One was their claim that the construction trailers on the site were too cold. This problem, however, was quickly corrected by the Respondent. The second reason given was the fact that when the employees on the site received their regular two weeks' pay on November 23rd, it had not been accompanied by the usual expense allowance cheque. It should be noted that on November 23rd Mr. Violette discussed the problem of the non-receipt of the expense allowance with Mr. Frost, and was informed that they would be arriving from Thunder Bay within the next couple of days.

8. Following the refusal to work by the employees, Mr. Violette met with Lloyd Frost. Both Mr. Violette and Mr. Frost in evidence gave similar accounts of what transpired at that meeting. Mr. Violette told Mr. Frost that he would try to get the men back to work. He also stated that he himself would not be working since he would now be on union business. Mr. Frost either expressly agreed to this, or at a very minimum acknowledged Mr. Violette's statement without raising any objections. Mr. Frost then telephoned his superiors in Thunder Bay. Mr. Violette, in turn, telephoned the Applicant's office in Toronto and talked to its business manager Don McIntyre. Mr. Violette testified that Mr. McIntyre told him to try to get the striking employees back to work. Following this Mr. Frost, accompanied at his request by Mr. Violette, went to talk to the employees in the trailer to try to convince them to go back to work, but without any success. Violette then made at least two more calls to the Applicant's office in Toronto, and talked to its Business Agent, Alexander Taggart. During one of these conversations Mr. Taggart informed Mr. Violette that he would be flying up to Sault Ste Marie the following morning, and instructed him to pick him up at the airport. It was Mr. Violette's uncontradicted testimony that between his calls to Toronto he went back to the trailer to try to get the strikers back to work. He also stated that on one occasion he spoke to another group of employees to dissuade them from also joining the work stoppage. At some point during the afternoon he met again with Mr. Frost to discuss the situation. It is clear that during that entire afternoon Mr. Violette was on the job site, but that he performed no work. It is also clear that at no time did the Respondent express dissatisfaction with Mr. Violette's activities nor was he ever instructed to return to work.

9. On the morning of Thursday, November 27th, all of the Respondent's employees on the job site gathered in a trailer and refused to begin to work. Mr. Violette was on the site from 8.00 a.m., the regular starting time, until 9.30 a.m. During this period of time he did no work. Exactly what he was doing for the full hour-and-a-half was not clearly brought out in evidence. However, it is undisputed that at some point after he arrived at the work site he informed Mr. Frost that he would be leaving to pick up Mr. Taggart at the airport. Mr. Frost raised no objection to this. Indeed, Mr. Frost testified that he was under the impression that Mr. Violette had the right to leave the site in that he had been so instructed by his Union. Mr. Violette left the work site about 9.30 a.m. and returned with Mr. Taggart at about 10.30 a.m. Mr. Taggart then talked to the men for about fifteen or twenty minutes. By 11.00 a.m. all of the employees, except for Mr. Violette, had begun to work.

10. Once the situation at the work site was brought back to normal a meeting was arranged to take place at the offices of the Respondent's solicitor in Sault Ste Marie. Attending at the meeting were the Respondent's solicitor, Mr. Taggart and Joefre Alcantara, the Respondent's Office Manager who had flown down from Thunder Bay late the night before with the all-important expense cheques. Messrs. Violette and Frost also drove down to the lawyer's office, but at first stayed out of the meeting room. Subsequently both were called in to participate in the remainder of the meeting. The meeting itself was taken up primarily with a discussion of the strike, and the events which led up to it. At the end of the meeting most of the expense cheques were turned over to Mr. Taggart for distribution to the men. Not included with these were the cheques for the men who had not worked on the previous afternoon, including that of Mr. Violette. Later the same evening a further meeting was held between Messrs. Alcantara, Taggart and Violette in Mr. Alcantara's hotel room. During that meeting the remaining expense cheques were turned over to Mr. Taggart.

11. On Friday November 28th the employees who had refused to work on the Wednesday afternoon were discharged. Mr. Violette had previously arranged for the day off, but when he reported for work on Monday, December 1st, he also was discharged.

12. The collective agreement before the Board provides that management may discharge employees for "just and sufficient cause" and that any discharge for cause may be grieved by the Union on behalf of the employee. Because discharge is the most extreme industrial penalty, boards of arbitration in Ontario have adopted the practice of placing the onus to show the existence of "just cause" for discharge on the employer. See, for example, *Association of Radio and Television Employees and Canadian Broadcasting Corp.*, (1968) 19 L.A.C. 295 (I. Christie, Chairman) as well as the cases cited therein. Applying this practice to the instant case, the Board hereby places the onus on the Respondent to show that just and sufficient cause existed for it to discharge Mr. Violette.

13. Counsel for the Respondent sought to justify the dismissal on the grounds that Mr. Violette had gone beyond his duties as a steward and had himself become involved in the strike. There was, he contended, a strong duty on the part of Mr. Violette as a steward to set an example to the other men by continuing to work. In support of this position he referred to the testimony of both Mr. Frost and Mr. Taggart to the effect that in the past when job disruptions had occurred Mr. Violette had merely telephoned Mr. Taggart who, in turn, telephoned the Respondent's officers in Thunder Bay to work out a solution to the problem. In this case, he argued, Mr. Violette, by going beyond the mere placing of a telephone call and becoming actively involved in the dispute had over-reached the bounds of his duty as a steward. He also contended that there had been no need for Mr. Violette to go out to the airport since Mr. Taggart could have found some other way to get to the work site.

14. The Board finds itself unable to agree with the position of the Respondent. Union officers are generally expected to take action to end an illegal strike. Indeed, the failure of a union officer to take active and reasonable steps to stop an illegal work stoppage may expose his union to a successful claim for compensatory damages. The rationale for this is that the collective agreement creates an obligation on the part of the union to attempt to bring to an end any illegal work stoppages, and that the position of the union can only be ascertained by the acts of its agents. In this regard see *Oil, Chemical and Atomic Workers and Polymer Corp. Ltd.* (1959), 10 L.A.C. 51 (B. Laskin, Chairman). This does not, however, mean that a union official has the right to unilaterally decide that he will spend his normal

working time in trying to terminate a strike. Rather, he should first obtain permission from his employer to do so. *Re: International Chemical Workers, Local 346, and Canadian Johns-Manville Co. Ltd.*, (1972) 24 L.A.C. 233 (R.W. Reville, Chairman). In the instant case Mr. Violette, the senior officer of the Applicant in the vicinity of the work site received, at a very minimum, the tacit permission of the Respondent's senior official on the site to leave work so that he could attempt to resolve the dispute. At no time was he told that he should cease his endeavours. Indeed, to the contrary: he was asked at one point to accompany Mr. Frost while he spoke to the men. If the Respondent at any time felt that Mr. Violette was overstepping his duties, or that since he was being unsuccessful in his attempts to end the work stoppage he might as well go back to work himself, he should have been so informed. Similarly, in the morning of November 27th Mr. Frost acquiesced in Mr. Violette's statement that he was going out to the airport. That afternoon no objections were raised to his presence at the lawyer's office and, indeed, he was invited to participate in the meeting. Although Mr. Violette may have been in error in his views of his rights once he was on union business, it is clear that the Respondent's senior representative acquiesced in what occurred, if for no other reason than he appeared to have been of much the same view as Mr. Violette as to what the latter's rights were. On this basis, the Board finds that the Respondent has failed to show just and sufficient cause for the discharge of Mr. Violette.

15. Having come to this determination, the Board would add that had the evidence shown that Mr. Violette had called or directed the strike, or that once the strike began his endeavours were directed not at ending the strike so much as using the strike to obtain concessions from the Respondent or to get the Respondent to take certain actions, then the decision might well have been very different.

16. Having regard to the foregoing, the Board hereby directs that the Respondent compensate Mr. Violette for any financial loss suffered as a result of his discharge on or about December 1, 1975. Should the parties not be able to agree on the amount, the Board will remain seized of the matter.

1778-75-R Hotels, Clubs, Restaurants, Tavern Employees' Union Local 261, (Applicant), v. **New Strathcona Hotel (Toronto) Ltd. – Berkeley Savoy Hotel**, (Respondent), v. Group of Employees, (Objectors).

Petition – Effect of Board's requirements regarding Petitions (Dissenting Decision).

BEFORE: George S.P. Ferguson, Vice-Chairman and Board Members H. Simon and W.H. Wightman.

APPEARANCES: *Stephen M. Grant, F. Cortese and Frank Grella for the applicant; D.K. Robinson and Roy LaRose for the respondent; Gilbert Raizenne for the objectors.*

DECISION OF GEORGE S.P. FERGUSON AND H. SIMON: May 25, 1976

1. On March 25, 1976 the Board directed the Registrar to list this matter for hearing before a differently constituted panel of the Board. This action resulted from the view of the Board that the matter ought to be re-heard with the benefit of a French interpreter. The direction of the Board was complied with and a hearing was conducted on April 21, 1976 when a French interpreter was present and the evidence adduced by the representative of the objectors was given with the assistance of the interpreter.
2. Having regard to the agreement of the parties the Board finds that all full-time employees of the respondent at the Berkley Savoy Hotel in Ottawa save and except manager, assistant manager, front desk clerks, office staff and persons regularly employed for not more than 24 hours per week, constitute a unit of employees of the respondent appropriate for collective bargaining.
3. The schedules provided by the respondent indicate, in accordance with the Board's usual practice, that there are 26 employees in the full-time bargaining unit. There are 25 persons listed on Schedule A and 2 persons listed on Schedule D, one of whom, due to the term of absence, is not included in the bargaining unit for the purpose of determining the membership position of the applicant. With respect to the 26 persons in the bargaining unit, the applicant has filed proper membership evidence with respect to 18 of these persons. Originally the membership evidence filed by the applicant consisted of 22 combination applications and receipts but some of this documentary evidence relates to part-time employees who are not included in the bargaining unit agreed to by the parties.
4. The petition in opposition to the application for certification contains 23 signatures. Of the persons who signed this petition eight of these persons had also signed an application for membership in the applicant. Therefore if the Board gave full weight to the petition there was sufficient overlap to reduce the position of the applicant union from outright certification to the holding of a representation vote. However, of the 8 signatures contained in the petition which constitute the overlap only two of same have been properly identified by the representative of the objectors. The end result is that the overlap of properly identified signatures only relates to two persons. Under these circumstances the position of the applicant to obtain outright certification could not be affected by the petition. It is not necessary for the Board to make a finding on the weight to be given to the petition in view of the failure on the part of the objectors to provide proper identification of signatures.
5. The Board is satisfied on the basis of all the evidence before it that more than fifty-five per cent of the employees of the respondent in the bargaining unit at the time the application was made, were members of the applicant on March 12, 1976, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.
6. A certificate will issue to the applicant.

DECISION OF BOARD MEMBER W.H. WIGHTMAN:

I Dissent.

Having in mind the fact that we are dealing with a question which falls within the discretionary authority of the Labour Relations Board, I would have exercised that discretion in favour of the group of employees. My reason flows from what I would regard as an inherent weakness in the certification procedure itself.

It will be recalled that in the normal sequence of events as a result of the union making application to the Board, the Board notifies the employees in question that an application for certification has been made. The material which the employer receives includes copies of a notice which the employer is required to display prominently as a means of advising the employees.

Included in the notice is advice as to how those employees who might wish to oppose the application may do so individually or jointly. While this information is explicit as to how the employee may register an objection it does not, and probably could not, forewarn a group of petitioners as to the full extent and nature of the tests they will be required to meet in order to validate their petition at the subsequent Board hearing. Since the employer is proscribed from advising or counselling the petitioners and since it would not be in the interest of the union to do so, the individual(s) presenting the petition is at a grave disadvantage.

At the subsequent hearing the Board subjects the individual(s) representing the petitioners to rigorous questioning as to the origination, preparation and circulation of the petition. At this stage the Board not infrequently concludes that the petition is in some way "tainted" by virtue of, for example, the employer having knowledge as to the existence of the petition while it was being circulated. Such a conclusion results in the Board refusing to give any further consideration to the petition.

If the individual(s) representing the petitioners is able to satisfy the Board's tests, the effect of the petition is to reduce the count of cards submitted by the union as evidence of membership by the number of individuals whose names appear on both the petition and the cards submitted by the union, with the best possible result to be expected by the petitioners being a secret ballot vote supervised by the Board.

As noted in para. 1 of the majority decision this was the second panel of the Board to hear the matter, the first panel having concluded on March 25, 1976 that the matter should be reheard with a French interpreter present.

At the second hearing on May 5, 1976, Mr. Gilbert Raizenne, appearing for the objectors, testified that he had originated the petition and witnessed a number of the signatures, and that a fellow employee had obtained and witnessed the remaining signatures.

Mr. Raizenne further testified that he was somewhat uncertain as to which signatures he had personally witnessed, it now having been a considerable time since the event. He proceeded to identify those signatures he could.

We can only speculate as to how many of the signatures contained in the petition which constituted an overlap would have been properly identified had Mr. Raizenne's fellow employee been present. It is important to my mind, however, that notwithstanding the fact that this was the second hearing of the matter, Mr. Raizenne testified that he did not understand

the significance which the presence of his colleague would have had to the relevancy of the petition. I would have thought this much could have been made clear to Mr. Raizenne before the second hearing.

At this point it bears repeating that from a reading of the notice which the employer is required to post, the rigorous tests which the Board requires to be met in order to validate a petition are not ascertainable and that only an individual experienced in these matters would be able to anticipate these requirements.

Furthermore, it may be worthwhile to set out in general terms some of the tests the Board requires to be meticulously followed in order to have a petition validated so as to secure a secret ballot vote:

- (1) the person circulating the petition cannot discuss it with the employer
- (2) the person circulating the petition should not obtain signatures on the company property
- (3) the person circulating the petition should not obtain signatures within sight of a member of management
- (4) every signature on the petition must be witnessed and such witness must testify before the Board on matters relating to the preparation of the petition, the obtaining of the signatures and the circulation of the document in question
- (5) the petition must not leave the person's hand who circulates it – if it does, then the person it is given to must appear before the Board to give evidence
- (6) the person circulating the petition must not get time off from work in order to mail the petition by regular mail (it must be noted that special delivery mail, even if mailed by the terminal date, will be rejected by the Board)
- (7) the person circulating the petition must not arrange for time off with pay to attend the Board hearing
- (8) should the person circulating the petition have any member of management sign it for whatever reason (even if the member of management believes he or she is in the bargaining unit) then all signatures secured subsequent to that of the member of management are disregarded by the Board, and
- (9) the person circulating the petition is subjected to rigorous cross-examination by the Board on questions pertaining to the origination, preparation and circulation of the petition.

I view it as being incumbent upon this Board to be at least as much concerned for the interests of the individual appearing before it as for employers and trade unions, and, in the

instant case, particularly so in light of the fact that the latter two parties were represented by experienced counsel.

If the Board had exercised its discretion in favour of Mr. Raizenne to the point of accepting the 8 overlapping signatures the result would have been a secret ballot vote, supervised by the Board, to determine the wishes of the employees regarding the application for certification.

I do not think this would be too much for the petitioners to ask of the Board, and I believe to deny the vote is to deny equity and natural justice.

0498-75-R United Steelworkers of America, (Applicant), v. **Hodgson's Steel & Ironworks Limited**, (Respondent), v. Group of Employees, (Objectors).

Employees – S1(3)(b) – Whether *de facto* office manager excluded – Whether chief buyer excluded – Whether expediter excluded – Effect of employees being related to management – Effect of corporate information return filed with government listing disputed employee as a director – S6(3) – Whether professional engineer employed as an estimator is employed in a professional capacity.

BEFORE: George W. Adams, Vice-Chairman; and Board Members F.W. Murray and P.J. O'Keeffe.

APPEARANCES: *J.A. Ryder and George Marshall for the applicant; S.C. Bernardo and Fred Hodgson for the respondent; Shirley Higgs for the objectors.*

DECISION OF GEORGE W. ADAMS, VICE-CHAIRMAN, AND BOARD MEMBER F.W. MURRAY: May 25, 1976

1. This is an application for certification.
4. The applicant filed an application on June 20, 1975 to represent "all office and clerical employees of the respondent at Niagara Falls, Ontario, save and except supervisors, persons above the rank of supervisor, accountant, students employed during the school vacation period and persons covered by the subsisting agreement between the respondent and United Steelworkers of America, Local Union 6460".
5. As a result of the positions of the parties, the Board appointed a labour relations officer to inquire into the composition of the bargaining unit with specific reference to the duties and responsibilities of Frank Benest; Wayne E. Hodgson; Trent Hodgson; Lenna Tonet; Ronald G. Anderson; David Milne; and Shirley Higgs.
6. It was agreed that Mr. David McEachern, listed by the respondent as a buyer, would be in the bargaining unit sought by the applicant and that Mr. Robert Lennox was part of the respondent's management and thus was to be excluded. The parties further agreed to the exclusion of students and employees working twenty-four hours a week or less

and that those employees classified as draftsmen and estimators ought to be included in the bargaining unit provided that any one of the individuals did not exercise managerial functions. Finally, the parties agreed that Gerald Smith and Arthur D. Armstrong are employed as foremen and properly excluded from the bargaining unit.

7. Having reviewed the evidence contained in the labour relations officer's report, and the direct testimony of witnesses before the Board, we have decided that Mrs. Shirley Higgs exercises managerial functions and is employed in a confidential capacity. Although a superficial reading of her testimony might suggest that she is merely one of the office clerks, closer examination has convinced us that she is a *de facto* office manager regardless of the absence of formal authority. She is the channel of communication between the office employees and Mr. F. Hodgson. She stated that she does not recommend pay raises, but the fact remains that when four employees wished raises they talked to Mrs. Higgs who then "talked to Mr. Hodgson" (p. 24/4). If someone wishes time off, they come to her. She then informs Mr. F. Hodgson but is not required to get his approval (p. 27/25-35). She seems to have an intimate knowledge of the salaries paid to other employees and has access to this information to fill out the employees' insurance policies (p. 28/15-20). She also admitted that she was aware of the last set of raises and of each individual's amount before the employees themselves knew (p. 32/20-25). This indicates a peculiar degree of intimacy with the management of the firm in direct opposition to her initial protestations of being "just a customs clerk". Mrs. Higgs interviews persons for employment with the respondent and it is important to note that, unlike any of the persons who testified to similar involvement in the hiring process, Mr. F. Hodgson does not interview those persons who have been interviewed by Mrs. Higgs (p. 27/9). Mrs. Higgs stated that she does not supervise any employees but the *de facto* reliance on her assistance and direction by both other office workers and Mr. F. Hodgson undercuts the absence of a formal delegation of supervisory authority. We would also point out that it was Mrs. Higgs who completed the forms sent to the respondent by the Board – forms pertaining to this application for certification. When all these matters are examined in their totality we find that the balance of probabilities is in favour of the exclusion of Mrs. Higgs from the bargaining unit. (See the "totality" principle as it is explained in *United Steelworkers of America and McIntyre Porcupine Mines Limited*, Board File No. 4373-73-R.)

8. Frank Benest is the chief buyer but he has no authority to make a purchase. He can only recommend purchases to Mr. F. Hodgson who makes the final determination and who signs all purchase orders. Essentially, Benest acts as a conduit pipe, supplying information on sources and prices. (See *The Hydro-Electric Power Corporation of Ontario* case, [1967] OLRB Rep. Aug. 699, paras. 8 and 9.) While Benest filters the information...presenting only the most acceptable offers to Mr. F. Hodgson...it is Mr. Hodgson who chooses from these alternatives (p. 5/34; p. 6/1-20; p. 8/23-25). The Board was concerned with Mr. Benest's involvement in the purported "lay-off" of Mrs. Diane Puskas. Mrs. Puskas testified that Benest had told her he was afraid he had to "let [her] go" in that the previous evening Mr. F. Hodgson had advised him to discharge her. However, this lay-off or discharge was never effected; Benest testified that he was merely relaying Mr. Hodgson's directions; and Hodgson told the Board that, while Benest and he had discussed Mrs. Puskas' performance, he had not instructed Benest to lay her off. No other evidence was adduced that indicates Benest plays a role in supervising and disciplining employees. Thus, on balance, we find he is entitled to the coverage of the Act.

9. R. Anderson is classified as an expeditor. His job is to keep track of customer inquiries and to insure their orders are met. However, he has no power to reassign production priorities, nor has he authority to order or request overtime (p. 15/5-15). It would appear that on occasion, when none of his supervisors were at the plant, he has rearranged production order. But such activity has been very exceptional (p. 17/15-35). Early in his employment he had occasion to screen job applicants, but this was some time ago and the evidence does not support the conclusion that he made effective recommendations in this regard in any event. There was a great deal of evidence led to show that Anderson is a foreman in Shop #4. We accept that at one point in time Mr. F. Hodgson told Mr. K. Parliament and Mr. G. Marshall that Anderson was a foreman but the evidence leads us to conclude that this statement was never acted on. Anderson has never functioned as a foreman in that Mr. G. Gagliari, who the applicant alleges to be his lead hand, testified that Anderson has never been his foreman. Finally, Hodgson has formally never (in writing, as was the practice) declared Anderson to be a foreman.

10. Mr. T. Hodgson is the son of Mr. F. Hodgson, the president and owner. He is employed as an estimator. Mr. T. Hodgson is not and never has been effectively involved in the labour relations of the respondent, and he holds no executive or management office. While two years ago he "sat in" on negotiations with the trade union representing the employees in the shop, he was studying labour relations at Niagara College at the time (p. 21/20-25). Thus his presence was of an observational nature. While it could be argued that the purpose of section 1(3)(b)... that of preventing difficult conflicts of interest... has significance where relatives of corporate owners are included in a bargaining unit, the Ontario Labour Relations Board is limited by the express wording of the statute and the statutory exclusion only pertains to those persons *exercising* managerial functions or those persons *employed* in a confidential capacity. The statute says nothing about persons who may experience conflicts of interest because of a familial relationship with a manager and thus the Board has held that such a relationship, in and of itself is an insufficient basis for the exclusion of an individual. (See *Corktown Public House*, [1969] OLRB Rep. 743 and *J. McLeod and Sons Ltd.*, [1970] OLRB Rep. 1316.) This same reasoning applies to Mr. W. Hodgson, a brother of Mr. F. Hodgson. W. Hodgson holds no executive office and has never attended a shareholders' or other corporate meeting (p. 13/34). He has never signed any papers on behalf of the company (p. 12/31) and has no employees under his authority (p. 12/7). He has no ownership in the company (p. 12/9 and 29). There is no evidence of his involvement in any confidential matters relating to labour relations.

11. Mr. Benest testified that occasionally he has requested Wayne Hodgson to sign purchase orders in the absence of Mr. Fred Hodgson and Wayne Hodgson admitted to doing this. However, the evidence is that Mr. Fred Hodgson is seldom away and when he is it is for very short durations. Moreover, Wayne Hodgson, who is the most senior estimator, has no other independent decision-making function. He does not supervise any other employee and no estimate or quote leaves the respondent's office without Mr. Fred Hodgson's approval.

12. The applicant, through Mrs. Patricia Welsh, adduced evidence that a "limited company search" with the Provincial authorities revealed that Wayne Everett Hodgson was listed as General Manager and a director of the respondent since 1971. However, Mr. Fred Hodgson testified that the listing was incorrect and that it had been corrected before the date of this application. A memorandum, under corporate seal and signed by the

respondent's secretary, showed the following officers, directors and shareholders as of June 20, 1975.

Officers

President – Frederick Nelson Barrow Hodgson

Secretary – Mary Elizabeth Hodgson

Treasurer – Gary Lennox Hodgson

Directors

Frederick Nelson Barrow Hodgson

Mary Elizabeth Hodgson

Gary Lennox Hodgson

Shareholders

Frederick Nelson Barrow Hodgson

Mary Elizabeth Hodgson

Gary Lennox Hodgson

Further, the Board was advised that Mr. Wayne Hodgson had never owned a share in the respondent and therefore, in law, was never entitled to be listed as a director. Accordingly, we must find that the evidence is insufficient to establish that Wayne Hodgson exercises managerial functions. The applicant submitted that the respondent was estopped from contesting Wayne Hodgson's status. We find that estoppel has no application in the circumstances. However, this same evidence establishes that Gary Lennox Hodgson exercises managerial functions and his name is to be struck from the schedule of names filed by the respondent.

13. The applicant submitted that Trent and Wayne Hodgson were employed in an "informal" management training program. However, Wayne Hodgson has been employed for eight years and it still cannot be said he exercises managerial functions. Furthermore, both men are paid on the same basis as the other employees performing like work. There being no definite time horizon to their current duties before they graduate to management, and because they are treated in the same way as other employees, it is not possible for this Board to exclude them on the suggested basis.

14. D. Milne is employed as an estimator. The applicant seeks his exclusion on the grounds that he is a professional engineer.

Section 6(3) of *The Labour Relations Act* reads:

(3) A bargaining unit consisting solely of professional engineers shall be deemed by the Board to be a unit of employees appropriate for collective bargaining, but the Board may include professional engineers in a bargaining unit with other employees if the Board is satisfied that a majority of such professional engineers wish to be included in such bargaining unit.

And section 1(1)(1) defines a professional engineers as "an employee who is a member of the engineering profession entitled to practice in Ontario and employed in a professional capacity". Mr. Milne stated that he is a professional engineer and entitled to practice in Ontario but that he is not working at his profession. When he was hired by the respondent he was not entitled to practice in Ontario (p. 20/15). For the last nine months he has been engaged in estimating as well as handling "miscellaneous contract lots". This latter duty involves insuring that any obscure details on drawing are clarified and that materials are available to effect the required machining. It could be argued that Milne draws on his professional expertise in performing this work but the witness denied that he was employed in a professional capacity and presumably this work was done by someone without Milne's qualifications prior to his hiring. (See *Falconbridge Nickel Mines Ltd.*, [1966] OLRB Rep. 379.) In the light of these facts, and with particular regard to *The Professional Engineers Act*, R.S.O. 1970, c. 366, s. 1(1), s. 27(c), we must conclude that Milne is not employed in a professional capacity. (See also *R. v. Mills*, [1974] 1 O.R. 74 (Ont. C.A.).) He is therefore included in the bargaining unit.

15. The respondent sought L. Tonnet's exclusion on the grounds that she was employed in a confidential capacity in matters relating to labour relations - she being employed as Mr. F. Hodgson's secretary. She has been employed in this capacity since April 30, 1975 and stated that in the course of her work she has not "seen anything connected with labour relations or management negotiations or dealings" (p. 33/25). In fact she testified that while she was hired as Mr. Hodgson's personal secretary "things just didn't work out that way". After the first three weeks she no longer worked very closely with him and found she was performing work that many others performed. She said that Mrs. Higgs was a confidential secretary more than she was and this was probably because Mrs. Higgs had been with the respondent for a long time. However, she also stated that she typed a couple of letters to the Labour Relations Board "confirming different things", and the respondent produced copies of two letters addressed to the respondent's lawyer pertaining to unfair labour practice matters filed with the Board that she had typed. It would also appear that she handles all of Mr. Hodgson's personal correspondence (p. 34/5). While the judgment is a difficult one, particularly in the light of Mrs. Higgs' involvement in some of the clerical work associated with the application for certification, we find that Miss Tonet is employed in a confidential capacity in matters relating to labour relations although the job may not be structured to her liking. She is therefore to be excluded from the bargaining unit.

16. Having regard to the above, as well as to all the aforementioned agreements of the parties, the Board finds that all office, clerical and technical employees of the respondent at Niagara Falls, Ontario, save and except supervisors, persons above the rank of supervisor, accountant, secretary to the president, students employed during the school vacation period, persons regularly employed for not more than twenty-four hours a week and persons covered by a subsisting agreement between the respondent and the United Steelworkers of America, Local Union 6460, constitute a unit of employees appropriate for collective bargaining. The Boards intends the term "supervisor" to include Mrs. Higgs.

17. This brings us to the extent of membership support in the bargaining unit enjoyed by the applicant and its charges under section 7(4) of the Act. July 2, 1975 was set as the terminal date for the application and the first hearing date was scheduled for July 7, 1975. On July 4, 1975 the applicant, by telegram, charged that a statement of desire filed on the same

date ought to be disregarded. The telegram went on to allege a number of improper actions by the management of the respondent. At the July 7th hearing before the Board the applicant indicated that it might request the Board to certify it under section 7(4) of the Act. By letter dated July 9, 1975 counsel for the applicant specifically requested that section 7(4) be applied and went on to detail the basis to his request which, for the most part, followed the allegations contained in the applicant's telegram. The respondent challenged the timeliness of this request but no prejudice was established and the Board therefore ruled that it would entertain the request. However, that ruling was subject to the express wording found in section 7(4). The section reads:

(4) If the Board is satisfied that more than 50 per cent of the employees in the bargaining unit are members of the trade union and that the true wishes of the employees are not likely to be disclosed by a representation vote, the Board may certify the trade union as bargaining agent without taking a representation vote.

18. The section's application is preconditioned by the requirement that "more than 50 per cent of the employees in the bargaining unit" must be members of the trade union. Such is not the case in the facts at hand. Based upon the list of employees filed by the respondent and the Board's bargaining unit determinations, we find that nineteen employees are employed in the bargaining unit. The applicant filed membership evidence on behalf of nine of these employees and thus the Board cannot be satisfied "that more than 50 per cent of the employees in the bargaining unit" are members of the applicant. Accordingly, the request under section 7(4) cannot be entertained.

19. Having regard to the applicant's membership position, the Board directs that a representation vote be taken of the bargaining unit found appropriate in para. 16.

20. Eligible to vote shall be all employees of the respondent in the bargaining unit on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is taken.

21. Voters will be asked to indicate whether or not they wish to be represented by the applicant in their employment relations with the respondent.

22. The matter is referred to the Registrar.

DECISION OF BOARD MEMBER P.J. O'KEEFFE:

1. On June 20, 1975 the applicant union filed an application for certification so as to represent a group of office and technical employees of the respondent at Niagara Falls.

2. The evidence in this case, from a full-time steelworker representative and at least four employees of the respondent company, evidences the following industrial relations horror story from the "honeymoon capital" of the world.

3. The respondent company received notice of the union's application from this Board on or about June 25, 1975.

4. On June 26, 1975 two employees, Pauline Gingas and Diane Finucane (now Mrs. Puskas), were notified of their discharge from the company. On that date, at various times, places and before various witnesses, the president of the company, Mr. Fred Hodgson, said among other things, the following: he [Hodgson] did not intend to have an office union in his plant; he was going to get rid of the Steelworkers Union from his plant, even if it meant closing the plant down; he would wipe the union out and he would invoke one lawsuit after another to do so; he supported the discharge of Pauline Gingas and said that there was no way he would have her back; he threatened that he may have to get rid of all the office employees. At 4:00 p.m. on that date, in front of the Steelworkers representative and five of his plant employees, he stated that on his return to his office he was going to fire eight other girls.

5. From June 26, 1975 to July 2, 1975 the evidence discloses a pattern of bullying, intimidation, coercion and unlawful conduct by Mr. Hodgson, the company president, and his secretary, Mrs. Shirley Higgs, in their anti-union campaign. The evidence of three office girls discloses that this campaign of intimidation carried out by management of this company had certain of the girls in tears at various times and, in general, were exposed to extreme pressure to have them disclose their union membership and have them sign a petition against the union.

6. At the first Board hearing into this application, held on July 7, 1975, counsel for the union advised the Board that he intended to request the Board to invoke section 7(4) of the Act in light of the anti-union conduct of the respondent employer. Section 7(4) read, at the relevant time, as follows:

(4) If the Board is satisfied that more than 50 per cent of the employees in the bargaining unit are members of the trade union and that the true wishes of the employees are not likely to be disclosed by a representation vote, the Board may certify the trade union as bargaining agent without taking a representation vote.

7. The precondition that "more than 50 per cent of the employees in the bargaining unit" has to be particularly noted to grasp the new stance of management in this case. If the bargaining unit can be expanded to include a variety of classifications, particularly those classifications of the incumbent job holders who are obviously opposed to the union, this can have the effect of reducing the union membership position below 50 per cent and thereby not meet the first requirement to reap the benefits of section 7(4). This kind of proposed gerrymandering expansion, if not successful in the foregoing objective can, in any event, provide that in any subsequent vote that there are additional anti-union people included in the unit that can be expected to vote against the union and, hopefully, defeat the union's application for certification. Further, having given this respondent sufficient time to continue his "electioneering" there is no way that any vote could reflect the true wishes of these well conditioned employees.

8. From the original mailed-fist behaviour of the respondent company in this application wherein, among other things, the respondent company president, Fred Hodgson, openly stated that he did not intend to have an office union in his plant, and equated membership in the union with personal disloyalty to him, we later find him requesting the Board to have included in the unit, among others, such persons as his secretary, who is known by

the employees as his office manager, his brother, Mr. Wayne Everett Hodgson, his two sons, Trent and Wayne Hodgson, and his purchasing agent, Frank Benest.

9. A corporate search at Queens Park on July 10; 1975, undertaken at the request of counsel for the union, reveals the following:

LIMITED COMPANY SEARCH

CLIENT *Cameron, Brewin & Scott (A.R.)* DATE *10 July*

CHARGED TO ORDERED BY *J. Ryder*

NAME OF CORPORATION *Hodgson's Steel & Iron Works Limited*

ADDRESS OF HEAD OFFICE *5580 Kalar Road, Niagara Falls, Ont.*

PURPOSE *Manufacturing Metal Products (also C.O.B. as "Hodgson's Steel")*

DATE INCORPORATED *10 January 1957* COMPANY'S BRANCH #
86430

DATE OF LAST ANNUAL RETURN *10 January, 1975*

OFFICERS	NAMES	ADDRESSES
<i>PRESIDENT</i>	<i>Federick N.B. Hodgson</i>	<i>3850 Potter's Heights Niagara Falls</i>
<i>TREASURER</i>	<i>Gary Lennox Hodgson</i>	<i>6863 Cherrygrove Niagara Falls</i>
<i>SECRETARY</i>	<i>Mary Elizabeth Hodgson</i>	<i>3850 Potter's Heights Niagara Falls</i>
<i>GEN. MGR.</i>	<i>Wayne Everett Hodgson</i>	<i>4546 Queen Street Niagara Falls</i>

DIRECTORS As above

OTHER: DATE OF RESIGNATIONS, SHAREHOLDERS, ETC.

Same officers and Directors since 1971 – when Wayne Everett elected.

SOLICITORS FOR CORPORATION Mathews & Mathews
5146 Victoria Avenue
Niagara Falls

10. The foregoing evidence of the respondent's board of directors is conceded by the company as representatives of the filings at Queens Park by their solicitors, but we are asked to believe that the foregoing information is not correct and never was correct, particularly with respect to Wayne Everett Hodgson.

11. Wayne Everett Hodgson, under oath, stated that he was not the general manager of the company, that he did not attend a directors' meeting in 1971 and was not elected at that meeting, as stated in the company return in Queens Park. This witness, when shown a copy of Frasers Canadian Trade Directory, wherein he is listed as the general manager of the company, stated, again under oath, that he was not aware that he was so listed in this trade directory and he did not know who gave this information to the trade publication. He stated that he has never attended any meetings at any time with other members of the company or family in relationship to the management of the company.

12. The president of the company, Mr. Fred Hodgson, also stated under oath that his brother, Wayne Everett Hodgson, was never a director of the company, never attended a directors' meeting and was never the general manager of the company.

13. Mr. Frank Benest, listed in the above-mentioned trade directory as purchasing agent of the company, denied that he was the company's purchasing agent. He had never been told by anyone in the company that he was the purchasing agent. His evidence was to the effect that he had practically no independent discretion to do anything in the company. He explained his role in the dismissal of Diane Finucane as just doing what he was told to do by Mr. Fred Hodgson.

14. The testimony of Mrs. Shirley Higgs is, not capable of belief in any detail. In fact, it is with extreme regret that I have to state that in my many years of service with the Board I have never before been faced with so many witnesses devoid of any credibility. A careful review of the examination and cross-examination of the evidence in this case leads me to the conclusion that Frederick N.B. Hodgson, Wayne Everett Hodgson, Frederick Trent Hodgson, Shirley Higgs and Frank Benest are not credible witnesses.

15. Having regard to all the evidence in this case I would grant the applicant's requested bargaining unit and would exclude therefrom the following managerial and/or confidential persons with respect to labour relations: Wayne Everett Hodgson, Frederick Trent Hodgson, Shirley Higgs, Frank Benest and R. Anderson. I would include D. Milne and L. Tonet in the bargaining unit.

16. In light of the fact that well in excess of 50 per cent of the employees in the proposed bargaining unit are already members of the applicant union, the respondent's request, amounting to an almost anguished cry from the heart that the subject employees be given a vote in this matter for a final determination of their true wishes, is surely an important lesson that cannot be lost to those of us involved in industrial relations. The plea for a free vote of the employees, coming from such industrial relations democrats as Mr. Fred Hodgson, the president of the respondent company, must at least be suspect that his kind of "Hodgson" free vote must be something different from the generally accepted type of free vote that we have come to expect in our democracy. In evidence we heard that Mr. Fred Hodgson is so determined to get the free vote for his employees that he has warned in the workplace that he was going to get a vote of the employees and, if not, he threatened that

his Member of Parliament and the Premier of the Province would hear of it. This industrial relations bully, who successfully recruited other management personnel as fellow lieutenant bullies, and who jack-booted with them throughout his domain reducing many of his office employees to tears, is not only an embarrassment to enlightened employers everywhere but puts all of his fellow citizens, who value our democracy, to shame. The evidence relating to the false and untrue corporate information given by this company to the proper governmental authority at Queens Park is indicative of the cynicism and contempt of this corporation for the legal requirements of our society.

17. The picture which has emerged from this case is that of an ugly corporate tycoon, more in tune with Orwell's 1984 Big Brother society than that of this time. His plea, for a free vote for his employees under the *Labour Relations Act*, would be farcical if it were not so sinister.

18. Based on all of the evidence I am satisfied that the true wishes of the employees are not likely to be disclosed in any representation vote the Board might order in this case and I would certify the applicant trade union as bargaining agent without the taking of a representation vote.

0175-76-R Teamsters Local 879 Affiliated with The International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. St. Catharines Building Supplies Limited (Respondent) v. Group of Employees (Objectors)

Petition – Effect of father of petitioner not testifying where he played a role in the origination of the petition.

BEFORE: Ian C.A. Springate, Vice-Chairman and Board Members O. Hodges and F.W. Murray

APPEARANCES: *I.J. Thomson and D. Swait for the applicant; C.M. MacIntyre, H. Freedman and P. Martens for the respondent; Gord H. Froese and Bob Janzen for the objectors.*

DECISION OF THE BOARD: May 19, 1976

2. This is an application for certification.

5. The Board is satisfied on the basis of all the evidence before it that more than fifty-five per cent of the employees of the respondent in the bargaining unit at the time the application was made, were members of the applicant on May 4, 1976, the terminal date fixed for this application and the date which the Board determines, under Section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under Section 7(1) of that Act.

6. There was filed with the Board in this matter a statement of desire, signed by nine (9) of the ten (10) employees in the bargaining unit, which reads as follows:

"We, the undersigned employees of St. Catharines Building Supplies Limited, hereby signify that we do not wish to be represented by the Teamsters Union, Local 879.

After further and more thought out discussions among ourselves, we have made the decision that we would be further ahead to negotiate our own means of settlement with the owner of the company, St. Catharines Building Supplies Limited."

If this statement of desire is found to be voluntary, it would create some uncertainty with respect to the true intentions of the bargaining unit employees as of the terminal date, and thus cause the Board to direct a representation vote pursuant to its discretion under Section 7(2) of the Act.

7. Gordon Froese, an employee within the bargaining unit, appeared before the Board to give evidence with respect to the origination and circulation of the statement of desire. He testified that following the posting of the Board's Form 5 – Notice to Employees of Application for Certification, on Thursday, April 29, 1976, he discussed the application with his father, who works for another firm in the St. Catharines area. His father indicated that he personally regarded unions as being more trouble than help to workers, and that the respondent's employees might be better off with some sort of "shop association" such as that which existed at the plant where he worked. Mr. Froese further testified that on the evening of Sunday, May 2nd, he met with three other employees, namely Neil Derstine, Robert Janzen and Arther Janzen, at the latter's home, and that he related to them his father's comments. The four of them then worked together to draft the heading for the statement of desire.

8. According to Mr. Froese, he took the statement home with him on the Sunday evening and then brought it in to work the next morning. During the morning coffee break in the respondent's lunch room 7 (seven) employees signed the statement. Mr. Froese testified that he saw each of the employees sign the statement, that no member of management was present, and that members of management do not usually use the room. Mr. Froese stated that at the end of the coffee break he took the statement of desire back to his car, and that it was not uncommon for employees to go out to their cars during the coffee break.

9. Mr. Froese further testified that after work on the Monday he briefly talked to two additional employees on the respondent's parking lot concerning the statement of desire, and that arrangements were made to have them sign it the following morning. The next morning, being Tuesday, May 4th, he again met the same two employees on the parking lot, and they signed the statement in his car. According to Mr. Froese he then left the statement of desire in his car until his lunch break, at which time he mailed it to the Board by registered mail.

10. Mr. Froese stated that at no time did he discuss the statement of desire with management or receive any assistance from management.

11. The Board is satisfied on the basis of the evidence before it, and having regard to the credibility of Mr. Froese, that the statement of desire was a voluntary expression of the employees who signed it.

12. In reaching this determination the Board recognized that Mr. Froese's father played a role in influencing him to oppose the trade union's application for certification and that his father did not appear at the hearing to testify. This does not, however, indicate a movement away from the Board's policy as expressed in the *Marsh Frozen Foods Limited* case [1970] O.L.R.B. Rep. Sept. 649. In that case the Board dismissed a statement of desire on the grounds that the employee whose idea it was failed to testify. The Board at that time indicated its concern that since the employee whose idea it was did not testify, the Board could not assess whether the circumstances surrounding its origination arose as a result of the voluntary wishes of that employee. In the instant case, however, there was no evidence to suggest that Mr. Froese's father had any connection with the respondent. On this basis the Board is unwilling to assume that either Mr. Froese or his father were influenced in any way by the respondent.

13. Having regard to the above the Board, pursuant to its discretion under Section 7(2) of the Act, orders that a representation vote be taken of the employees in the bargaining unit described in paragraph 4 on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between date hereof and the date the vote is taken.

14. Voters will be asked whether or not they wish to be represented by the applicant in their employment with the respondent employer.

15. The matter is referred to the Registrar.

7313-74-U Saverio A. Greco Cement Finisher Local 598, (Complainant), v. A. Frank Amis Business Agent Local 598 (and Charles W. Irvine, International Vice-President), (Respondents).

S61 – Whether trade union officials sought by intimidation or coercion to compel complainant to cease union activity or membership – Whether case should be heard by the Board or left to be dealt with by internal union procedures – Whether a S61 complaint may be brought against a trade union – Whether actual intimidation or coercion must occur.

BEFORE: Rory F. Egan, Alternate Chairman, and Board Members P.J. O'Keeffe and J.E.C. Robinson, Q.C.

APPEARANCES: *Brian Iler for the applicant; Chris Paliare, David Baker and A.F. Amis for the respondents.*

DECISION OF THE BOARD: June 11, 1976

1. This is an application in which the complainant alleges a breach of section 61 of the *Labour Relations Act*. The application was withdrawn insofar as Charles Irvine was concerned and it is accordingly dismissed with respect to that respondent.

2. The complainant alleges that over the course of some fourteen years the respondent, Frank Amis, business agent for Operative Plasterers and Cement Masons International Union of the United States and Canada, Local 598 (hereinafter referred to as "Local 598") has denied him the rights declared to be his under section 3 of the Act, contrary to section 61 of the Act.

Section 61 provides as follows:

61. No person, trade union or employers' organization shall seek by intimidation or coercion to compel any person to become or refrain from becoming or to continue to be or to cease to be a member of a trade union or of an employers' organization or to refrain from exercising any other rights under this Act or from performing any obligations under this Act.

Section 3 provides as follows:

3. Every person is free to join a trade union of his own choice and to participate in its lawful activities.

3. Saverio Greco, the complainant, is a cement finisher. He joined Local 598 in or about 1957 at which time Frank Amis, the respondent, was the business agent for Local 598. Greco's membership was renewed in 1969. At that time Amis' connection with Local 598 had been terminated by a decision of the International Executive Board.

4. The evidence is not clear as to when Amis first joined Local 598 but it does indicate that he was a member in 1958. In 1961 Amis became business agent for Local 598. As already noted, Amis' membership was brought to an end in 1962 by the Executive Board of the International Union. Amis, in cross-examination, showed an extraordinary ignorance of the reasons for the actions taken against him by the International. In any event he was reinstated in Local 598 some time in 1972 and on or about August 21st of that year he became acting business agent or business manager of Local 598. He also held the positions of financial secretary and recording secretary. He held these three offices at the time of these hearings.

5. The evidence adduced at the hearings into this complaint deals with the relationship between Greco and Amis during their concurrent membership in Local 598 from about 1960 to 1974. The acceptance by the Board of evidence relating to incidents so far in the past was principally to enable the complainant to adduce evidence purporting to demonstrate the animus on the part of Amis towards Greco as well as to set the background for the later and more timely evidence upon which the complainant relies in support of his allegations.

6. It was suggested by counsel for the complainant that the abrasive relationship between Greco and Amis, which is revealed by the evidence, arose out of a total clash of the personalities of the two men. The Board finds that there is much truth in that statement but it is also persuaded, having considered the evidence, that underlying these proceedings is not only a clash of personalities but also a collision of principles. Broadly speaking, the complainant Greco has a high regard and deep-rooted respect for the concepts of democracy and free elections. Amis, in Greco's opinion, gives only lip service to these principles.

but in fact would rather dictate to than debate with the membership of Local 598. Evidence of the matters in which the membership meetings were conducted gives support to Greco's point of view and goes far towards explaining much of his opposition to Amis. There are other factors, however, which go to illuminate the reasons for the antagonism which exists between these two men. It also became clear that there exists a group of members of Local 598 who are actively and strenuously opposed to Amis as to his continuance in office. Greco is one of this group. He does not appear to be the leader and indeed is not considered by Amis to be the leader of the group. It was Amis' opinion that Greco was being used by the opposing faction to promote their cause.

7. While some of the matters which were dealt with in the evidence may be remote in point of time and while others may have their basis in suspicion rather than in fact, they all have to be taken into account as forming a framework to which the more immediate and more timely events complained of may be viewed so that the evidence with respect to these latter incidents may be properly weighed.

8. An underlying and significant incident occurred in December of 1960. At that time Greco was employed on the construction of the Gardiner Expressway in Toronto. He fell from a scaffolding on which he was working and suffered serious injury. He testified that on the morning of the day of the accident he had seen Frank Amis near the work site. Although there was no other evidence offered which would in any way support his belief, it is abundantly clear that Greco blames Amis for this accident and that this belief has had a significant influence upon his attitude towards and suspicion of the motives of Amis in their subsequent relationships. References to this accident arose several times during the hearing and the matter will be dealt with further later in this decision.

9. It has been indicated Amis returned to Local 598 some time in mid-1972. According to Greco's testimony, Amis was not elected but was appointed to the office of acting business manager. At this point in the proceedings, Greco was testifying without the aid of an interpreter and it is somewhat difficult to fully understand his evidence on this point. Both here as elsewhere during his testimony Greco became very excited and almost hysterically incoherent. He did indicate, however, that the return of Amis to Local 598 was, in his mind, connected with the expelling from the union of what he called "a poor, honest group of officials". This displacement of "honest" officials deeply disturbed Greco and added to his already existing dislike and distrust of Amis. In fact, during a membership meeting when the matter of Amis' returning was being discussed, Greco made a speech to the members of Local 598 which is set out in the transcript of evidence as follows:

Q. Mr. Greco, can you tell me what you said?

A. I say: "Brothers, I was here to forget my past trouble. If you are going to hire in tonight Mr. Amis, that happy to you. I don't vote in favour or against, but I promise to take all my files, all my papers to the Justice of Canada, because this man he did it he said "Brother, I don't kill nobody and I am swearing right away."

Q. Who said?

A. Mr. Amis. He say don't kill nobody. I told: "Brothers, if I am still in life, it is a miracle." But they few men, very few men, they cover in my voice, make noise, people who bring in Amis. Then president say, "All right. We voted." When they voted...

10. The speech is a capsule summary of Greco's attitude towards Amis at that time and obviously his reference to the accident and to Amis' previous connection with and severance from Local 598. It was certainly a clear notification to Amis of a very deep-rooted opposition to his appointment. Adding to Greco's opposition to the appointment of Amis as business manager was the further installation of Sygmunt Jedrasik as assistant business manager by appointment and not by election.

11. The staff of Local 598 was completed by the employment of Mrs. Frank Amis as office secretary. Thus, in the period from 1972 until these proceedings arose, Frank Amis was business manager, recording secretary and financial secretary of Local 598. He was assisted by Jedrasik, an appointed official, and by his wife, as office secretary. It was Greco's position that Local 598 was therefore completely under the control of Frank Amis. The evidence certainly supports this position.

12. The Board would point out at this time that it is not primarily concerned with the internal structure of Local 598 nor with the seat of power therein but rather with the question as to whether that power was exercised in such a way as to contravene the provisions of section 61 as alleged by Greco. No adverse inferences may be drawn in that specific regard merely from the fact that the possession of power and control by one or more individuals.

13. A considerable amount of evidence was devoted to the practices of Local 598 with respect to the hiring of members and the recording of the names of employees in the Out-Of-Work Book, which is kept in the union office. This book purports to comprise a running record of the members of Local 598 who are out of work and are seeking employment. It is designed to ensure an equitable distribution of available work to the members. The basic intent is to see that the first person laid off will be offered the first opening in the area of the trade in which he is qualified. This apparently simple scheme can become complicated because there are additional factors such as the skill and ability of the employees concerned, their personal preferences and even the available means of transportation which are allowed to interfere with a theoretically simple scheme. Amis testified, for instance, that Greco did not want to work for only two or three days for a flooring company but wanted a guarantee of a long stretch of employment. The scheme is further complicated by the fact that a member might get his own job and simply ask for a work permit from the union. All of these matters render the Out-Of-Work Book something less than revealing to anyone seeking to understand it and it was apparent that only the person in charge of the book fully understood its ramifications. It was Greco's complaint that this book was kept under the exclusive control of Amis although entries might be made from time to time by Mrs. Amis or the assistant business manager.

14. The complaints with respect to the use made of the Out-Of-Work Book and the assignment of employees thereunder, together with Greco's additional complaint that the book is never made available for inspection by himself or other employees relate to the con-

duct of the union's hiring hall. At the time that this application was made, the Act did not contain section 60a which now deals with the kind of complaint made by Greco in relation to the dispatch of members of Local 598 to jobs by the local office. Section 60a now provides:

60a. Where, pursuant to a collective agreement, a trade union is engaged in the selection, referral, assignment, designation or scheduling of persons to employment, it shall not act in a manner that is arbitrary, discriminatory or in bad faith.

15. It is obvious that the Legislature, in enacting section 60a, was attempting to provide a remedy for actions which are not embraced by the provisions of section 61 of the Act.

16. In order to better understand subsequent developments, it is necessary at this point to review evidence dealing with an incident that arose about October of 1972 and which involved Greco and Amis. At that time Greco was laid off at a job at Ian Johnston Company (reference to that lay-off will be made later in the decision). Greco reported to the office of Local 598 that he had been laid off but that he had obtained work for himself at W.A. Stephenson Limited where he had worked on previous occasions. Amis advised him that Stephenson would have to hire through the union office and directed Greco to go to work at Sturgeon Waterproofing Limited. Greco objected but finally agreed to "collaborate". Greco stated that he objected to going to Sturgeon because he was not a waterproofer which was the category required by the company, but he agreed to go provided he got cement finisher's wages. Amis insisted that Greco said that he was capable of doing waterproofing. In any event, a dispute arose with respect to Greco's rate of pay and his travelling expenses. Greco complained to the union that he had not been adequately compensated. He ceased to work at Sturgeon and was told by Amis that he was then free to go to work for Stephenson. By this time Stephenson only had a "cheap" job available.

17. Greco was very persistent in attempting to have Amis obtain an adjustment on his wages and made repeated visits to the office to insist that Amis take action on his behalf. Greco testified that no genuine demand for adjustment was made by Amis and that the matter was treated as a joke until such time as Greco, having made a telephone call to Sturgeon, told Amis, "In this time I going to fixed you – now I go to the Labour Relations Board." Shortly thereafter, Greco received a call from Sturgeon, and subsequently a cheque covering the arrears was delivered to his home.

18. Originally, this incident was particularized to show that Amis had not taken proper steps to obtain the money. That aspect of the complaint was withdrawn, however, the incident is reviewed nevertheless because of a subsequent reference to it which has a bearing upon the charges of intimidation and discrimination.

19. There can be no doubt from the evidence that Amis eventually played a part in obtaining a settlement of the dispute with Sturgeon. It was Greco's contention that Amis had originally attempted to set him up for union discipline for working for less than a cement finisher's wages and that this purpose was frustrated by Greco's own action.

20. The immediate sequel to this event as described by Greco is also of importance in conducting a proper review of the evidence. Greco testified that Amis told a membership

meeting of Local 598 that occurred after the settlement that he had done a favour to Greco by switching him from Sturgeon to Stephenson at Greco's request. Greco also testified that Amis told another membership meeting that he, Amis, had been to the Labour Relations Board about Sturgeon. Greco's reaction to that statement at the time it was made is recorded in the transcript of evidence as follows:

Then meeting started. That meeting starting, he read his progress report. He say: "Brother, I been to Labour Relations Board to call in Sturgeon Company, because Sturgeon Company pays Saverio Greco for less and this is trouble, this many trouble, again the company." I make motion. Then I got it. When I got motion I told them "It is not true, this man he order to the company to send me a Christmas card only. This man he organized another accident, or otherwise that company broke out of the business." Then so many people complained against Amis...

Q. Did Mr. Amis say anything more with respect to you?

A. After, when I make that: "You no be to Labour Relations Board, because I split them up myself." After he change it. He said: "Brothers, I mean Saverio Greco, Sturgeon did not pay the contribution to Saverio Greco." He said that. That I don't know and I can't answer. I was seated and I stand still seated. Don't do nothing more.

21. In other words, Greco deliberately discredited Amis in front of the membership of Local 598. On the basis of the evidence heard by the Board with respect to the Sturgeon affair, we accept Greco's story and in particular we believe that he used the threat of going to the Labour Relations Board to Amis and that, while this may in turn have been mentioned by Amis in his final communication with Sturgeon, he in fact made no approach to the Board.

22. This incident demonstrates that Greco was persistent and unrelenting in pursuing Amis in an attempt to have him recover the money due from Sturgeon. It also discloses the fact that Greco was not afraid to denounce Amis at a general membership meeting of Local 598. Further, the incident may still supply the background for at least one probable explanation for the extraordinary events that are dealt with below.

23. In December of 1972, Greco attended at the union office after he had finished working at Sturgeon and without any difficulty had his name placed upon the Out-Of-Work Book. On or about the 21st or 22nd of December, he received a phone call from Mrs. Amis in which he was asked to report to the local office. Greco's evidence as to what followed, as it is recorded in the transcript, follows. The transcript picks up the evidence at a point after which Greco has told the Board that Mrs. Amis had knocked on the door of her husband's office and announced Greco's arrival. Amis then came out of his office together with Angelo Burigano.

A. When I saw Mr. Amis and Mr. Angelo Burigano.. I don't know his name, I am very confidential that man; I never speak before - Amis told me: "Brother Greco, come in, come in." And open his table to make me go through. Then I saw Mr. Burigano waiting his door office, private office of Mr. Amis, and

in there great big size man, terrible big size man was seated just beside, shoulder against the wall like that, and Bruno Zannini inside like there, another man inside. Only myself was outside the counter, lobby you call it. When I saw that four men he has told me: "Brother Greco, come in, come in," then I scream, screaming in that people and I told: "Gentlemen, I got nothing to do his private office. I no want to go to his office." I screaming. He coming in, he say "Come in." Like that. Just pushing me. I told: "Gentlemen..." I scream just like that. Then Mr. Amis, he told me "Brother Greco, you don't know who is gentleman. This gentleman, it is Brother Angelo Burigano, business manager of Local 117." I told: "How do you do, Mr. Burigano. I know your name. You are a collaboration of our local or sister local union." 598 we are and Local 117, like also 48, many locals, we collaborate – call it sister or single organization. We are all dependent of Charlie Irvine, the head.

Then Mr. Burigano, I had chat in the office. He told "With me, Brother Greco, come in. I have chat." When I closing I go in there, say "Sit down, sit down." I was sit down with my shoulder in westbound, my front in – I was sit down on one side. Angelo Burigano with shoulder to the door, Mr. Amis shoulder the window, with the shoulder in the door front, Mr. Burigano sit down here.

Q. I'm sorry, I didn't understand what the word was.

A. Mr. Burigano was seated in one chair in front of Mr. Amis, and I was seated inside, by side. Just when I am going to take a seat, I be big alert, and then I saw Amis, he makes a nod, like that to Burigano with the hand. How call it I don't know.

Q. He made a motion indicating Mr. Burigano should leave?

A. Yes, just a sign. Mr. Burigano, when he starting to come up, stand from the chair. I was ready standing from the chair. I no want waiting with Mr. Amis alone. Then Mr. Burigano, he turn it open the door to go. When he opened the door to go, I was right with the handle in the door. As I approached Burigano the handle to leave it free, Burigano opened the door to walking out, and I keeping the handle of the door to go. Mr. Amis he told me: "Brother Greco, just a minute." When he say that I don't closing the door, I keep it half way open and held it well to see my face to other people. The other three people was coming there, not Frank Amis. Mr. Amis was alone in his office in his own seat. Myself I was grabbed in the door, his office door, and five, six or seven feet away of me was Bruno Zannini and Angelo Burigano, and that great big man he was seated against the wall watching me all the time, and I hear what Amis want to tell me. Then he started: "Brother Greco, you know who fire you from Johnston, last job, you got it?" He say "I do." "I know" I tell him. "Brother Greco, it who laughs last laughs longest." I say "I know." "You know who order Sturgeon to pay me less?" I said "I know."

Q. Excuse me, who said?

A. Mr. Amis, he told me many, many trouble he put into me.

Q. Tell us what he said.

A. The last one was big.

Q. Tell us everything he said.

A. Everything. He started from my job what I was working with the confidence, really confidence, and foremen was my friends and the only – really I don't know. Any cement finishers was my friends, just like to work with me. That was in Johnston. He told me that first one to help me, no, he fire me from that. He told me: "You know I don't give you work permit to go back for Stevenson. You know who ordered to pay less to Sturgeon." "I know, I know." But after he told me: "You know, you remember when you working for Pigott Construction at Gardiner Express and Bathurst." I told: "Never forget Monday 20th September, 1960, at 9.30 a.m." He told me "I pushed you." I told: "I know you organize it but you don't walk with me on the scaffold." That is what I am asking all the time. So if I know who pushed me from the scaffold. He told me "You got a strong brain but don't worry. I give you a choice. Which you like?" He told me: "Don't worry. I give you a choice. You see that room in the front of you? – just a little bit left side little front of me. It is one room with a red sign "Danger Area – Stay Alert". Nobody can read it, if you don't go in that area. From the counter you can't read it, but from there I read it well "Danger Area – Stay Alert". That door was closed. He told me "That room it is full of dynamite. Which you prefer – dynamite in your house with all your family, dynamite in yourself in the car, or shooting you in the street?" "My children is grown up. You never catch my family. I give to all authority of Ontario what happened to my life." He told me: "Get out of here. I'm going to serve on you very soon."

24. Amis testified that he had never threatened Greco except to the extent that he told him he would put him out in the hall if he did not stop screaming and shouting in the office. He stated that he did not go around telling people he would kill them. Amis further stated that he did not know about any accident in 1960. He added that no accident was ever reported to him by Greco or anyone in his family and that he knew nothing about it except through rumours. He denied ever suggesting to Greco that he was responsible for causing the accident on the scaffold.

25. It is perhaps appropriate to say at this point that the Board has given careful consideration to all the evidence adduced in the hearings and in doing so has called to mind its observations of the demeanour of the witnesses while they were in the box, together with the manner in which their evidence was told. The task has not been made easy by the fact that Greco, although demonstrating that he was basically a very intelligent man, was from time to time a difficult witness to listen to. No expert evidence was led on the point but it is nevertheless a fact that no reasonable person could escape the conclusion that the accident has had a very significant effect upon Greco's mind with respect to his relationship and attitude towards Amis. Greco's evidence, particularly when it touched upon this accident, was frequently very emotional, sometimes to the point of hysteria. His voice varied in tone from high-decibel stridency to barely audible moans, the latter sometimes accompanied by tears. The Board has attempted to assess Greco's evidence in a properly detached and reasonable way without, at the same time, failing to give due and measured regard to the manner of delivery as an element to be considered in weighing his testimony.

26. The Board accepts Greco's evidence as to what transpired at the meeting of December 22, 1972. It is simply beyond belief that Greco could have concocted the story with all of its details. There can be no doubt that the meeting of December 22, 1972 was designed by Amis and his colleagues to intimidate and terrorize Greco because of his opposition to Amis. The incident is shocking and wholly reprehensible. The Board is fully aware of the fact that Greco's expressed and zealous opposition to Amis as an officer of the union, his persistence and, if Greco's conduct before the Board is any indication, the strident manner in which he gives vent to his feelings, must have provided some provocation to retaliation on Amis' part. Nevertheless, such brutal conduct was certainly not warranted by anything heard in the evidence and it deserves the utmost condemnation. Not only is that the case but all the incidents preceding and following that event must be looked at in the light of that episode. There was evidence adduced before the Board that on or about July 9, 1973 Amis physically assaulted Greco when the latter refused and urged others to refuse to sign a blank consent to check-off form. The Board has no difficulty in accepting Greco's statement that this assault took place.

27. The Board also accepts Greco's claim that on or about January 20, 1975 Amis demanded that he have a union meeting because he had not paid a fine although Greco had never been advised that there was a fine or charge outstanding against him. Amis refused to proceed with the meeting until Greco left.

28. The respondent submitted that the latter two incidents were matters which should properly be dealt with through the internal, constitutional procedures of the union and were not matters with which this Board should concern itself.

29. In regard to this submission the Board would point to what was said in *Canadian Chemical and Textile Union* case, [1971] OLRB Rep. Aug. 469, in which it was alleged that the respondents had removed from office the president of a local union contrary to section 52 [now section 61] of the Act. A preliminary objection was raised on the ground that the question involved was a union matter to be left to be dealt with by its internal procedures. Paragraphs 4 and 5 of the above decision read as follows:

4. We reserved decision on the preliminary issue and heard evidence directed to the merits of the case. We propose to decide this case on the merits. However, we wish to comment briefly on the preliminary issue raised because in our view the issue is to be resolved on a different basis from that of the courts. The subject matter before the courts is very extensive and covers a wide range of matters. Initially, we noted that the courts have taken jurisdiction in a number of instances. See *Carrothers, Collective Bargaining Law in Canada*, pages 527 to 541. Issues of collective bargaining or labour relations are only a small part of the courts broad and general jurisdiction. This Board however, has been specifically designated by the legislature to entertain certain issues central to collective bargaining and those issues which find expression in the Labour Relations Act while permitting matters of internal trade union concern are also matters of public policy with the expectation by the legislature that this tribunal is the more appropriate forum to adjudicate upon those issues. We are not prepared to accede to the "contract theory", which indicates that members of a trade union may have contracted to exhaust their rights within the internal trade union machinery before re-

sorting to this Board where the issue *prima facie* indicates a violation of public policy.

5. In arriving at our conclusion we are not prepared to shut the door completely on the view that members of a trade union may be required to exhaust their internal trade union machinery before coming to this Board, nor are we prepared to now define which matters we may leave to the internal union procedures. But, at the very least, where a trade union requests this Board to permit resort to internal union procedures it must provide "due process" and "natural justice" to the persons concerned. That, too, is a matter of public policy. In *Lee v. Showmen's Guild of Great Britain* 1952 All E.R. p. 1175 at 1180 Denning L.J. stated:

Although the jurisdiction of a domestic tribunal is founded on contract, express or implied, nevertheless the parties are not free to make any contract they like. There are important limitations imposed by public policy. The tribunal must, for instance, observe the principles of natural justice. They must give the man notice of the charge and a reasonable opportunity of meeting it. Any stipulation to the contrary would be invalid. They cannot stipulate for a power to condemn a man unheard.

(See also *UAW Local 1408 and General Impact Extrusions (Mfg.) Ltd.*, [1972] OLRB Rep. Aug. 798, wherein the Board deferred to the constitutional provisions.) In the present instance the evidence and the issues are concerned with allegations of breaches of the *Labour Relations Act*, matters which thus are specifically brought within the jurisdiction of the Board. It might well be, nevertheless, that if the incidents were isolated and the proper internal machinery were readily available, with appropriate remedies, that the Board would defer to the constitutional procedures. In the present case, however, we are not concerned with an isolated incident. We are dealing with matters which go together to form a pattern of conduct in an ongoing relationship between Amis and Greco. Furthermore, there is that in the evidence that indicates that any constitutional remedy that might appear to be available would be, in the present circumstances, difficult to obtain and long in the coming, if, indeed, it were possible of attainment at all. These doubts are based upon the fact that Amis is, to all intents and purposes, Local 598 and Charles Irvine, who testified at the hearings in an obvious biased and prejudicial manner, is both an officer of the international union and an obvious supporter of Amis in his contest with Greco. The Board consequently has rejected the submissions of counsel for the respondent and has taken the incidents into account in arriving at its decision.

30. The complainant relied entirely upon the provisions of section 61 of the Act. It was contended by the respondent, however, that that section was not designed to deal with the situation under review. However, the Board does not accept the argument of the respondent and follows the reasoning set out by the Board in *International Brotherhood of Electrical Workers, Local 120*, [1967] OLRB Rep. Sept. 586. In that case the complainant argued that he had been intimidated and coerced by the trade union and compelled to refrain from becoming a member of the trade union because an officer of the union had threatened him and physically prevented him from writing the union's entrance examination.

31. The respondent in the above case took the position that section 52 [now section 61] was not intended to provide a remedy in the circumstances. The Board dealt with that argument in paragraph 12 of the decision in which it stated the following:

12. The activity usually dealt with under section 52 of the Act is activity on the part of an employer who does not wish his employees to become union members. In addition section 52 is intended to protect an employee from pressure by one union which tends to prevent the employee from becoming a member of another union. However, while it is not usually necessary for a person to invoke section 52 of the Act because of the conduct of the union, as alleged in this case, it is the opinion of the Board that the wording of section 52 affords the complainant the protection he is seeking. To give any other interpretation to section 52 of the Act would be to distort the literal meaning of the words used in the section.

As indicated above, the Board in the present case accepts the reasoning set out in the foregoing quotation.

32. It is clear from a reading of section 61 that a violation of that section occurs the moment a person "seeks" to compel another to do one of the acts set out in the section. It is therefore unnecessary for a complainant to prove that he has in fact been intimidated or coerced in doing or refraining from doing anything. The offence is complete once an attempt to compel by intimidation or coercion has been made.

33. The complainant sought damages from the respondent on the grounds of intimidation and coercion which included deprivation of work because of the deliberate and discriminatory refusal of Amis to assign him work according to his entitlement under the procedures governing the use of the Out-Of-Work Book.

34. Although, as argued by counsel for the respondent, the claim for damages might be said to arise more precisely out of a breach of section 60a rather than that of section 61, it cannot be said that for that reason relief by way of damages cannot be given under section 61 where the facts go to intimidation and coercion within the meaning of the latter section.

35. The claims for damages relate to incidents which occurred in the 1960s and to incidents which occurred commencing in December of 1972 and continuing to the date of the complaint.

36. There was considerable evidence offered in an attempt to establish the damages said to have been suffered by Greco during specific months in the years between 1962 and 1967. Quite apart from the fact that the claims for those years are so obviously untimely, they must also be denied because there is no proof that work in the Local was available to Greco personally during these selected times. The claim for damages in the 1960s period is therefore dismissed.

37. There are also difficulties surrounding the proof of damages alleged to having been suffered by Greco in the 1970s. Counsel for Greco frankly admitted that difficulties existed and he had not been able to come up with any suggested figures with respect to the

measure of compensation that ought to be awarded for that period. He suggested, however, that the difficulty of assessing damages is not a justification for not granting any. The Board, of course, agrees with that as a general proposition. It would add, however, that it must nevertheless be presented with evidence upon which it may reasonably base an assessment. In the case before us, however, not only are there no suggested figures put forward by the complainant but the evidence which was adduced fails to provide a basis upon which damages could reasonably be found. We say this without in any way adversely criticizing the diligence of counsel for the complainant in this respect. There is, in the evidence, and it was so argued by counsel for Amis, and indication that Greco would prefer not to work during the months of December and January. It also appears from the evidence that, in any event, the lowest rate of employment normally occurs in these months. In addition, Greco indicated that he objected to taking jobs that would only last a day or so. These items are not decisive of the issue but they indicate the difficulties inherent in the situation before the Board.

38. The longest continuing period for which there is a claim for damages runs from December 14, 1973 until September 9, 1974. It is to be noted that that period commenced when Greco quit a job he had had with the J.O. Dougall Company on December 13, 1973. It ought to be further noted that there is nothing in the evidence to indicate how long that job might have gone on after the date on which Greco quit of his own accord.

39. When asked why he had quit the Dougall job, Greco replied:

Because, as I said many times, they absolutely wanted to kill me, and I didn't want to pass by Douglas Point any more, because I have bad memories, because the friends of Charlie and Amis work at Douglas Point for the Hydro, and they are able to execute his orders.

40. There arises here a question as to the reasonableness of excuses given by Greco for quitting the job. It should be remarked here that there is absolutely no evidence before the Board which goes to support Greco's theory of the cause of his accident or to indicate that Amis was connected with it in any way.

41. Greco testified that he went to the union office on December 14, 1973 at which time there was a crowd of persons gathered around the union office. These persons, according to the testimony, were there to protest against Amis and Charles Irvine. Notwithstanding the confusion, Greco asked Amis to put his name on the out-of-work list. He said that Amis then wrote his name on a piece of paper. The evidence also shows that there was considerable union political activity going on throughout December 1973 and January 1974 involving crowds surrounding the union office to which the police were called and meetings of members of the Local who were opposed to Amis. An appeal had been made to the head office of the union with respect to the government of the union and an election had been ordered. There was a meeting in March 1974 of opponents to Amis in connection with the new elections. In April of 1974 an injunction was obtained prohibiting the election. It is clear that Greco was concerned in all of these matters.

42. On April 14, 1974 Greco obtained a job with the Adam Clarke company at which he worked until laid off in August 1974. His testimony was that he worked as a labourer and, although his earnings were higher per week than he had been making in his trade, he

nevertheless wanted to work at his trade and kept looking for cement finishing work during this period. Two weeks after his lay-off, his name is shown on the Out-Of-Work Book. The evidence is that he was referred by the local union to a job on September 5, 1974 but he refused to go to it. The union then gave him a different job at Bramalea commencing on September 9, 1974. Greco was laid off from the Bramalea job on October 30th and was sent by the union to a job at Vanguard on November 8, 1974.

43. The foregoing, at least in the periods it covers, is inconsistent with Greco's claims of discrimination in the assignment of work. This, taken with the whole of the evidence, leads the Board to finding that Greco has not made out a case for damages as he has claimed.

44. The Board now turns to the other aspect of the case, that is the claim based upon intimidation and coercion.

45. The Board finds, on the evidence, that over the course of many years Greco has been a persistent, stubborn and unrelenting opponent of Amis. He has demonstrated as dogged a determination to oust Amis from the union as Amis has to get rid of him. Greco has brought his complaints with respect to his treatment by Amis to a number of authorities. The list includes the Courts, the Ministry of Labour, the Workmen's Compensation Board, the Unemployment Insurance Commission, the Ministry of Justice, the Attorney General, and the Royal Commission on Certain Sectors of the Building Industry. At one time, in January of 1973, Greco co-operated with the police in an attempt to collect evidence against Amis. He attended the union office equipped with a hidden device which, according to his testimony, would transmit conversations to police cruisers which were circling the building. It was with some regret that he advised this Board that on that occasion, Mr. Amis was incredibly polite.

46. On the whole, it must be said that the evidence establishes that, notwithstanding the depth of his abhorrence of Amis, Greco sought to accomplish his purposes in accordance with the law and normal democratic procedures. His tone, no doubt was often loud and his tongue sometimes acrimonious but fundamentally his methods and language and remedies he sought were well within the law.

47. On the other hand, the Board finds, having particular although not exclusive regard to the incident of December 22, 1972, that the evidence establishes that Frank Amis has consistently sought, through coercion and intimidation, to force Greco out of the trade union of which he is a member, contrary to the provisions of section 61 of the *Labour Relations Act*.

48. The Board, pursuant to the provisions of section 79 of the Act, therefore directs the respondent, Frank Amis, business agent of Local 598 of the Operative Plasterers' and Cement Masons' International Union of the United States and Canada, to

- a) allow Saverio Greco reasonable and free access to the entering of his name on any out-of-work list or record maintained by the local together with the inspection of such list or record at all reasonable times;

- b) allow Saverio Greco, so long as he complies with the reasonable rules and regulations of the constitution of the local and the International, reasonable and free participation in all the lawful activities of the local and the International, including membership meetings, subject only to compliance by Greco of the rules of procedure from time to time governing such meetings;
- c) cease and desist from threatening bodily harm to Saverio Greco or from seeking to intimidate or coerce Saverio Greco, contrary to the provisions of section 61 of the Act.

CASE LISTINGS JUNE 1976

	Page
1. Applications for Certification	
(a) Bargaining Agents Certified	93
(b) Applications Dismissed	104
(c) Applications Withdrawn	108
2. Applications for Declaration Terminating Bargaining Rights	108
3. Applications for Declaration of Successor Status	109
4. Applications for Declaration that Strike Unlawful	109
5. Application for Declaration that Lock-Out Unlawful	110
6. Applications for Consent to Prosecute	110
7. Complaints under Section 79 (Unfair Labour Practice)	111
8. Application under Section 39	113
9. Applications for Consent to Early Termination of Collective Agreement	114
10. Application under Section 55	114
11. Application under Section 76 (Financial Statement Requested By Trade Union Member)	114
12. Jurisdictional Dispute	114
13. Applications for Determination under Section 95(2)	114
14. Reference to Board Pursuant to Section 96	115
15. Applications under Section 112a	115
16. Applications for Reconsideration of Board's Decision	116

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING JUNE 1976

Applications for Certification

BARGAINING AGENTS CERTIFIED

No Vote Conducted

0731-75-R: The Resilient Flooring Contractors' Association of Ontario (Applicant) v. Resilient Floor Workers, Local Union 2965, United Brotherhood of Carpenters and Joiners of America (Respondent).

Unit: "all employers of employees engaged in the installation of carpet, hardwood, resilient and related floor coverings for whom the respondent has bargaining rights in Metropolitan Toronto, the Counties of York and Peel, the Township of Esquesing, the Towns of Oakville and Milton in the County of Halton, and the Township of Pickering in the County of Ontario, in the industrial, commercial and institutional sector and in the residential sector of the construction industry." (no employees in the unit).

0783-75-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Inglis Limited (Respondent).

Unit: "all clerical, office and technical employees of Inglis Limited located at Stoney Creek, Ontario, save and except supervisors and persons above the rank of supervisor, private secretary to the vice president, secretary to the engineering manager, personnel and payroll department employees (excluding Patricia Lilliman and Terry Marshall who are to be included in the bargaining unit), process engineers, the senior project engineer, students employed during the school vacation period and students engaged in a co-operative training program." (37 employees in the unit).

1007-75-R: The Carpenters' District Council of Toronto and vicinity on behalf of Locals 27, 666, 681, 1133, 1963, 3227 and 3233, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Ranfas Engineering & Construction Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

1220-75-R: The Carpenters' District Council of Toronto and Vicinity on behalf of Locals 27, 666, 681, 1133, 1963, 3227 and 3233, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Bradsil Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the

County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

1443-75-R: Retail, Wholesale and Department Store Union, AFL: CIO: CLC (Applicant) v. Rooney & Mervyn, Division of Allind Distributors Limited (Respondent).

Unit: "all employees of the respondent at Sault Ste. Marie, Ontario save and except assistant manager, persons above the rank of assistant manager, office and sales staff, persons regularly employed for 24 hours per week or less and students employed during the school vacation period." (3 employees in the unit). (*Having regard to the agreement of the parties*).

1592-75-R: United Brotherhood of Carpenters and Joiners of America, Local Union #1669 (Applicant) v. Memorial Marble & Tile Co. Ltd. (Respondent) v. The International Union of Bricklayers & Allied Craftsmen Local #1, Man. (Intervener) v. Group of Employees (Objectors).

Unit: "all employees of the respondent employed as tile setters in the District of Kenora, including the Patricia portion, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

1726-75-R: Kingston Typographical Union, No. 204 (Applicant) v. The Intelligencer, Published by Canadian Newspapers Company Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at 45 Bridge Street East in the City of Belleville, Ontario, and its district bureaux at Picton and Trenton, Ontario employed in the editorial department and more specifically in the editorial, news, sports, social, photographic and proof reading departments save and except the publisher-general manager, secretary to the publisher-general manager, managing editor, editor, city editor, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (17 employees in the unit).

1766-75-R: Ontario Nurses' Association (Applicant) v. Walter P. Hogarth Memorial Hospital (Respondent) v. Group of Employees (Objectors).

Unit #1: "all registered and graduate nurses employed by the respondent in the City of Thunder Bay engaged in a nursing capacity, save and except head nurses, persons above the rank of head nurse, persons regularly employed for not more than 24 hours per week and persons covered by subsisting collective agreements." (12 employees in the unit). (*Having regard to the agreement of the parties*).

(Bargaining Unit #2 – See Application Certified Subsequent to Post-Hearing Vote).

1837-75-R: United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC (Applicant) v. Whitman Golden Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Cambridge, save and except supervisors, persons above the rank of supervisor and office, technical and sales staff." (72 employees in the unit). (*Having regard to the agreement of the parties*).

0098-76-R: United Brotherhood of Carpenters & Joiners of America, Local 2486 (Applicant) v. Gav-Bar Holdings Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices employed by the respondent on construction project within a radius of thirty-five miles from the City of Sudbury Federal Building, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the

unit). (*Having regard to the agreement of the parties*). (*clarity note*; see Report of full decision [1976] OLRB Rep. June.).

0116-76-R: Labourers' International Union of North America, Local 183 (Applicant) v. Greenwin Property Management Ltd. (Respondent).

Unit: "all employees of the respondent engaged in cleaning and maintenance at 10 and 5 Parkway Forest Drive, and 20 Forest Manor Drive, Don Mills, including resident superintendents, save and except property managers, persons above the rank of property manager, office and clerical staff." (8 employees in the unit). (*Having regard to the agreement of the parties*).

0121-76-R: Canadian Union of Public Employees (Applicant) v. The Greek Community of Metropolitan Toronto (Respondent).

Unit: "all employees of the respondent in Metropolitan Toronto regularly employed for not more than twenty-four hours per week as instructors in the Greek language." (101 employees in the unit). (*Having regard to the agreement of the parties*).

0169-76-R: Hotel & Restaurant & Bartenders' International Union, Local 604, Peterborough, Ontario (Applicant) v. The Branahasi Restaurant Ltd., (Montreal House) Peterborough, Ontario (Respondent).

Unit: "all of the employees of the respondent at Montreal House in Peterborough, Ontario, save and except assistant manager and persons above the rank of assistant manager and those persons covered by existing collective agreements." (4 employees in the unit). (*In accordance with the agreement of the parties*).

0187-76-R: Retail Clerks Union, Local 206 (Applicant) v. Niagara Farms Market (owned and operated by C. A. Dunnett and Sons Ltd.) (Respondent) v. Group of Employees (Objectors).

Unit #1: "all employees of the Respondent at Niagara Falls, Ontario, save and except store manager, persons above the rank of store manager, office staff, meat manager, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (25 employees in the unit). (*Having regard to the agreement of the parties*).

Unit #2: "all employees of the Respondent at Niagara Falls, Ontario, regularly employed for not more than twenty-four hours per week and students employed during the school vacation period, save and except store manager, persons above the rank of store manager and meat manager." (12 employees in the unit). (*Having regard to the agreement of the parties*).

Unit #3: "all employees of the Respondent at Welland, Ontario, save and except store manager, persons above the rank of the store manager, mean manager, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (9 employees in the unit). (*Having regard to the agreement of the parties*).

Unit #4: "all employees of the Respondent at Welland, Ontario, regularly employed for not more than twenty-four hours per week and students employed for not more than twenty-four hours per week and students employed during the school vacation period, save and except store manager, persons above the rank of store manager and meat manager." (3 employees in the unit). (*Having regard to the agreement of the parties*).

0199-76-R: United Steelworkers of America (Applicant) v. Burlington Works-Continuous Rod Processing Plant, The Steel Company of Canada, Limited (Respondent).

Unit: "all employees of the respondent employed in its Continuous Rod Processing Plant – Burlington Works located in Burlington, Ontario, save and except foremen, persons above the rank of foreman, office, clerical and sales staff and persons covered under a subsisting agreement dated December 17, 1975 with the applicant relating to Burlington Works – Fastener Shipping Centre." (19 employees in the unit). (*Having regard to the agreement of the parties*).

0211-76-R: International Molders & Allied Workers Union (Applicant) v. Aeroquip (Canada) Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of Aeroquip (Canada) Limited in Perth, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff, and students employed in the school vacation period." (47 employees in the unit). (*Having regard to the agreement of the parties*).

0231-76-R: United Steelworkers Of America (Applicant) v. Boart Canada Limited (Respondent).

Unit: "all employees of the respondent in North Bay, save and except foremen, persons above the rank of foreman, office, clerical, technical and sales staff, cafeteria manager and students employed during the school vacation period." (37 employees in the unit). (*Having regard to the agreement*).

0246-76-R: Canadian Union of Public Employees (Applicant) v. Toronto Public Library Board (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent save and except for persons regularly employed for not more than twenty-four hours per week, maintenance and custodial staff, the superintendent of buildings and grounds, those above the rank of area librarian, the administrative assistant in the personnel office, the principal clerical assistant code 4 in the personnel office, and the confidential secretary to the chief librarian." (351 employees in the unit). (*Having regard to the afore-mentioned agreement*).

0263-76-R: Labourers' International Union of North America, Local 183 (Applicant) v. James Dick Construction Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent engaged in concrete forming on residential building projects in Metropolitan Toronto, the Regional Municipality of York and the County of Peel, the Township of Esquering and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (26 employees in the unit). (*Having regard to the agreement of the parties*).

0264-76-R: Labourers' International Union of North America, Local 183 (Applicant) v. James Dick Construction Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all construction labourers in the employ of the respondent in the County of Simcoe, the District Municipality of Muskoka and the Township of Thorah and all land north thereof in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (12 employees in the unit). (*Having regard to the agreement of the parties*).

0270-76-R: Amalgamated Meat Cutters and Butcher Workmen of North America (Applicant) v. Empress Foods Limited (Respondent).

Unit: "all full time employees of the respondent at its plant in Ruthven, Ontario, save and except foremen and foreladies, those above the rank of foreman and forelady, office staff, field inspectors, employees hired as seasonal help, and those employees hired for less than twenty-four hours per week." (10 employees in the unit). (*Having regard to the agreement of the parties*).

0275-76-R: International Union of Operating Engineers, Local 793 (Applicant) v. Timmins Gravel Products Co. Ltd. (Respondent).

Unit: "all employees of the respondent at Timmins, save and except foremen, persons above the rank of foreman, office and sales staff." (9 employees in the unit).

0278-76-R: International Union of Operating Engineers Local 796 (Applicant) v. Queensway-Carleton Hospital (Respondent).

Unit: "all stationary engineers and those persons primarily engaged as their helpers in the power house, (Queensway-Carleton Hospital, 3045 Baseline Road, Ottawa) save and except chief engineer and those above the rank of chief engineer." (5 employees in the unit) (*Having regard to the agreement of the parties*).

0279-76-R: Local Union 304, Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers (Applicant) v. Nacan Products Limited (Respondent) v. Local 325, International Union of Brewery Workers, 1 Carlingview Drive, Rexdale, Ontario (Intervener).

Unit: "all employees of the respondent's plant located in Collingwood, Ontario, save and except foremen, persons above the rank of foreman, office staff, casual. employees and laboratory technicians." (29 employees in the unit). (*Having regard to the agreement of the parties*).

0284-76-R: International Molders & Allied Workers Union (Applicant) v. Goodwill Electric Supplies Limited (Respondent).

Unit: "all office and clerical employees of the respondent at 358 Silvercreek Parkway N, Guelph, Ontario, save and except branch manager, assistant branch manager, purchasing agent(s), commission salesmen, supervisors and persons above the rank of supervisor." (3 employees in the unit). (*Having regard to the agreement of the parties*).

0288-76-R: Teamsters, Chauffeurs, Warehousemen and Helpers Local 880 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. Deneau Steels Limited (Respondent).

Unit: "all employees of the respondent at Windsor, Ontario, save and except foremen, those above the rank of foreman, office and sales staff." (4 employees in the unit).

0291-76-R: International Beverage Dispensers' and Bartenders' Union, Local 280 of the Hotel and Restaurant Employees' and Bartenders' International Union, A.F.L.-C.I.O. and C.L.C. (Applicant) v. West Hill Hotel Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Westhill save and except manager, persons above the rank of manager and persons regularly employed for not more than 24 hours per week." (11 employees in the unit). (*Having regard to the agreement of the parties*).

0295-76-R: Labourers' International Union of North America, Local 183 (Applicant) v. Belmont Property Management (Respondent).

Unit: "all employees of the respondent engaged in cleaning and maintenance at 2900 Bathurst Street and 120 Sherborne Avenue, Toronto, including resident superintendents, save and except property managers, persons above the rank of property manager, office and clerical staff." (4 employees in the unit). (*Having regard to the agreement of the parties*).

0300-76-R: International Molders & Allied Workers Union (Applicant) v. Goodwill Electric Supplies Limited (Respondent).

Unit: "all office and clerical employees of the respondent at Simcoe, Ontario save and except supervisors, persons above the rank of supervisor, assistant branch manager, branch manager, commissioned salesmen, purchasing agent(s), and persons covered by a previous Board certificate under File No. 1737-75-R." (2 employees in the unit). (*Having regard to the agreement of the parties*).

0301-76-R: International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. J.A.K. Electrical Contractors Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all electricians and electrical apprentices in the employ of the respondent in Board Section 8 save and except non working foremen and persons above the rank of non working foreman." (16 employees in the unit). (*Having regard to the agreement of the parties*).

0314-76-R: Heatex Employees Association (Applicant) v. Heatex, Division of James B. Carter Ltd. (Respondent).

Unit: "all employees of the respondent at its Martin Grove Road plant in the Municipality of Metropolitan Toronto save and except assistant foremen, persons above the rank of assistant foreman, office, clerical, technical and sales staff." (84 employees in the unit). (*Having regard to the agreement of the parties*).

0319-76-R: Labourers' International Union of North America, Local 183 (Applicant) v. Belmont Property Management Ltd. (Respondent).

Unit: "all employees of the respondent engaged in cleaning and maintenance at 3636 Bathurst Street, Toronto, including resident superintendents, save and except property managers, persons above the rank of property manager, office and clerical staff." (3 employees in the unit). (*Having regard to the agreement of the parties*).

0334-76-R: Chatham Construction Workers Association, Local No. 53, affiliated with the Christian Labour Association of Canada (Applicant) v. Pro Electric Incorporated (Respondent).

Unit: "all electricians and electricians' apprentices in the employ of the respondent in the Counties of Essex and Kent, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit). (*Having regard to the foregoing*).

0335-76-R: Oil & Gas Technicians, Service, Domestic & General Workers Union Local 1267, L.I.U. of N.A. (Applicant) v. Gil's Fine Foods Limited (Respondent).

Unit: "all employees of the respondent working in and out of Mississauga, save and except foremen, persons above the rank of foreman, office staff and persons regularly employed for not more than twenty-four hours per week." (22 employees in the unit). (*Having regard to the agreement of the parties*).

0339-76-R: London and District Service Workers Union, Local 220 S.E.I.U., A.F.L., C.I.O. C.L.C. (Applicant) v. Thameswood Lodge of the Ontario Cancer Foundation (Respondent).

Unit: "all employees of the respondent at London, save and except professional nursing staff, supervisors, persons above the rank of supervisor, office staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (4 employees in the unit).

0340-76-R: London Ambulance Attendants' Association Local 3 for Tecumseh and Leamington District (Applicant) v. Sunparlor Emergency Services Incorporated (Respondent).

Unit: "all employees of the respondent in Tecumseh and Leamington Districts, save and except supervisors, persons above the rank of supervisor, office staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation." (16 employees in the unit). (*Having regard to the agreement of the parties*).

0341-76-R: Federation of Community Agency Staffs (Applicant) v. Catholic Children's Aid Society of Metropolitan Toronto (Respondent).

Unit: "all persons employed by the respondent for not more than 24 hours per week, save and except supervisors, persons above the rank of supervisor, office and clerical staff, drivers, maintenance staff, housekeepers, homemakers, students employed during the school vacation periods, and persons covered by a subsisting collective agreement." (13 employees in the unit). (*Having regard to the agreement of the parties*).

0358-76-R: Canadian Union of Public Employees (Applicant) v. Corporation of the County of Hastings (Respondent).

Unit: "all registered nurses employed by the Respondent at Hastings Manor at Belleville, save and except the Nursing Supervisor and persons above that rank." (11 employees in the unit). (*Having regard to the agreement of the parties*).

0361-76-R: Labourers' International Union of North America, Local 183 (Applicant) v. Belmont Property Management (Respondent).

Unit: "all employees of the respondent engaged in cleaning and maintenance at St. Andrews Towers Apartments in Metropolitan Toronto, including resident superintendents, save and except property managers, persons above the rank of property manager, office and clerical staff." (16 employees in the unit). (*Having regard to the agreement of the parties*).

0380-76-R: Labourers International Union of North America, Local Union #493 (Applicant) v. Zoltan Fuisz Masonary Contractors (Respondent).

Unit: "all construction labourers in the employ of the respondent within a twenty mile radius of the North Bay post office, save and except non-working foremen and persons above the rank of non-working foreman." (7 employees in the unit).

0384-76-R: Office & Professional Employees International Union Local 267 (Applicant) v. Corporation of the Improvement District of Red Rock (Respondent).

Unit: "all office and clerical employees of the respondent in the improvement district of Red Rock, save and except supervisors and persons above the rank of supervisor." (4 employees in the unit).

0401-76-R: Labourers International Union of North America Local 491 (Applicant) v. Bermingham Construction Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent within a fifty mile radius of the Timmins Federal Building, save and except non-working foremen and persons above the rank of non-working foreman." (5 employees in the unit). (*Having regard to the agreement of the parties*).

0403-76-R: International Union, United Automobile, Aerospace and Agricultural Implement workers of America (UAW) (Applicant) v. Blackstone Industrial Products Limited (Respondent).

Unit: "all quality control technicians and laboratory technicians of the respondent in Stratford, Ontario, save and except students employed during the school vacation period and persons covered by the subsisting collective agreement between the respondent and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), Local 1132." (27 employees in the unit). (*Having reached this conclusion*).

0404-76-R: International Brotherhood of Electrical Workers Local Union 911 (Applicant) v. Town of Belle River (Respondent).

Unit: "all employees of the Town of Belle River Water Department at Belle River, save and except foremen, persons above the rank of foreman, office staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (3 employees in the unit).

0405-76-R: Local Union 911 International Brotherhood of Electrical Workers (Applicant) v. The Belle River Hydro-Electric Commission (Respondent).

Unit: "all employees of the respondent at Belle River, save and except foremen, persons above the rank of foreman, office staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (3 employees in the unit).

0413-76-R: International Union of Doll & Toy Workers of the United States & Canada, Local 905 (Applicant) v. Mainco Industrial Cleaning Corp. (Respondent).

Unit: "all employees of the respondent at its plant at 1255 McKinney Road, Niagara Falls, Ontario save and except foremen, persons above the rank of foreman, office and sales staff and persons regularly employed for not more than twenty-four hours per week." (8 employees in the unit).

0416-76-R: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (UAW) (Applicant) v. Long Manufacturing Division of Borg-Warner (Canada) Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at its plant in Mississauga, Ontario save and except foremen persons above the rank of foreman, office and sales staff." (22 employees in the unit). (*Having regard to the agreement of the parties*). (*clarity note* – see Report of full decision [1976] OLRB Rep. June).

0426-76-R: United Brotherhood of Carpenters and Joiners of America Local Union 93 (Applicant) v. D.C. Builders' Supplies Reg'd (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Regional Municipality of Ottawa – Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman." (6 employees in the unit).

0430-76-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1190 (Applicant) v. Pazienza Carpenter Co. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the

County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

0437-76-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Maurice H. Rollins Construction Limited (Respondent).

Unit #1: "all construction labourers in the employ of the respondent in the Township of Elizabethtown, Augusta, and Edwardsburgh and all lands south thereof (there are three Municipalities south of these townships: Brockville, Prescott and Cardinal) in the United Counties of Leeds and Grenville, save and except non-working foremen and persons above the rank of non-working foreman." (11 employees in the unit).

Unit #2: "all carpenters, carpenters' apprentices and construction labourers in the employ of the respondent in the County of Lanark, and the Townships of South Crosby, Bastard, Kitley, Wolford, Oxford (on Rideau) and South Gower and all lands north thereof in the Counties of Leeds and Grenville, save and except non-working foremen and persons above the rank of non-working foreman." (12 employees in the unit).

0442-76-R: International Brotherhood of Painters and Allied Trades – Local Union 1891 (Applicant) v. L. DiBernardo Acoustical Ceilings, Drywall Systems & Carpentry Co. (Respondent).

Unit: "all painters and painters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Nilton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit). (*clarity note* – see Report of full decision [1976] OLRB Rep. June).

0452-76-R: Labourers' International Union of North America Local 1081 (Applicant) v. Petros Construction and Development Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent in the Counties of Brant and Norfolk, save and except non-working foremen and persons above the rank of non-working foreman." (9 employees in the unit). (*clarity note* – see Report of full decision [1976] OLRB Rep. June).

0453-76-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Hotel Kenricia Limited (Respondent).

Unit: "all carpenters, carpenters' apprentices and construction labourers in the employ of the respondent in the District of Kenora, including the Patricia Portion, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit). (*Having regard to the foregoing*).

0454-76-R: Canadian Union of Public Employees (Applicant) v. Rayron Holdings Limited carrying on business as Chatelaine Villa Nursing Home (Respondent).

Unit: "all employees of Chatelaine Villa Convalescent Home at St. Catharines, Ontario save and except professional Medical Staff, graduate nurses, undergraduate nurses, graduate pharmacists, undergraduate pharmacists, graduate dietitians, student dietitians, Business Administrator, Director of Nursing, persons above the rank of Director of Nursing, office staff and students employed during the school vacation period." (51 employees in the unit). (*Having regard to the agreement of the parties*).

0474-76-R: The United Brotherhood of Carpenters and Joiners of America (Applicant) v. Bulwark Construction Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the County of Renfrew, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

0490-76-R: Federation of Community Agency Staffs (Applicant) v. Youth Services Bureau (Respondent).

Unit: "all employees of the Youth Services Bureau in the Regional Municipality of Ottawa-Carleton save and except supervisors, co-ordinators and persons above the rank of supervisor or coordinator, persons employed for not more than twenty-four (24) hours per week and students employed during the school vacation period, clerical and office employees, maintenance employees and housekeeping employees." (30 employees in the unit).

0528-76-R: United Brotherhood of Carpenters & Joiners of America Local Union No. 38 (Applicant) v. J. H. Conlon Construction Limited (Respondents).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Regional Municipality of Niagara and the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

Applications Certified Subsequent to Pre-Hearing Vote

0128-76-R: Canadian Chemical Workers' Union (Applicant) v. Canadian Pittsburgh Industries, A Division of P.P.G. Industries Canada Limited (London (31) Branch) and London C & R #72 (Respondent) v. International Chemical Workers Union Local 172 (Incumbent Trade Union) v. Painters & Allied Trades, Local 1783 (Intervener).

Unit: "all inside employees of the respondent at London, Ontario, save and except executive officers, office staff, plant guards, foremen, and those above the rank of foreman, and persons covered by a subsisting collective agreement between the respondent and the intervener." (7 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on list as originally prepared by employer			7
Number of persons who cast ballots		7	
Number of ballots marked in favour of applicant	7		
Number of ballots marked in favour of Incumbent Trade Union		0	

0161-76-R: International Woodworkers of America (Applicant) v. Superior Hardwood Veneers Ltd. (Respondent).

Unit: "all employees of Superior Hardwood Veneers, Rankin Indian Reserve, Sault Ste. Marie, Ontario, save and except foremen and foreladies, persons above the rank of foreman and forelady, office and sales staff, persons regularly employed for not more than twenty-four hours per week, and students employed during school vacation period." (27 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on revised voters' list		24
Number of persons who cast ballots		22
Number of ballots marked in favour of applicant	14	
Number of ballots marked against applicant	8	

0206-76-R: Canadian Chemical Workers Union (Applicant) v. Zochem Limited (Respondent) v. International Chemical Workers Union Local 279 (Incumbent Trade Union).

Unit: "all employees of the respondent at its plant in Brampton, Ontario save and except foremen, persons above the rank of foreman, office staff (which shall include laboratory personnel) and students employed during the summer vacation." (25 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on original voters' list		25
Number of persons who cast ballots		18
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	16	
Number of ballots marked in favour of incumbent Trade Union	1	

Applications Certified Subsequent to Post-Hearing Vote

1766-75-R: Ontario Nurses' Association (Applicant) v. Walter P. Hogarth Memorial Hospital (Respondent) v. Group of Employees (Objectors).

Unit #2: "all registered and graduate nurses regularly employed by the respondent in the City of Thunder Bay for not more than 24 hours per week, engaged in a nursing capacity, save and except head nurses, persons above the rank of head nurse and persons covered by subsisting collective agreements." (16 employees in the unit).

Number of names of persons on list as originally prepared by employer		11
Number of persons who cast ballots		8
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	5	
Number of ballots marked against applicant	2	

(*Bargaining Unit #1 – See Bargaining Units Certified – No Vote Conducted*).

1863-75-R: Retail Clerks Union, Local 206 (Applicant) v. T.R.S. Food Service Limited (Respondent) v. Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Intervener) v. Group of Employees (Objectors).

– and –
- and -

1894-75-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. T.R.S. Food Service Limited (Respondent) v. Retail Clerks Union, Local 206 (Intervener) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in Woodstock, Ontario save and except supervisor, persons above the rank of supervisor and office staff." (20 employees in the unit).

Number of names of persons on list as originally prepared by employer		8
Number of persons who cast ballots	8	
Number of ballots marked in favour of Retail Clerks Union, Local 206	0	
Number of ballots marked in favour of Retail, Wholesale and Department Store Union, AFL:CIO:CLC	8	

0186-76-R: International Union of Operating Engineers, Local 793 (Applicant) v. F. C. Woodcock Cartage & Excavating Ltd. (Respondent) v. The Employees Association of F. C. Woodcock Cartage & Excavating Ltd. (Incumbent Trade Union).

Unit: "all employees of the respondent at Kingston save and except sub-foremen, persons above the rank of sub-foreman, apprentices and casual labour." (10 employees in the unit).

Number of names of persons on list as originally prepared by employer		10
Number of persons who cast ballots	10	
Number of ballots marked in favour of applicant	7	
Number of ballots marked in favour of Incumbent Trade Union	3	

APPLICATIONS FOR CERTIFICATION DISMISSED

No Vote Conducted

1857-75-R: International Brotherhood of Painters and Allied Trades Local Union 1891 (Applicant) v. Cimini Lathing Contractors Ltd. (Respondent). (12 employees).

0049-76-R: International Beverage Dispensers' and Bartenders' Union, Local 280 of the Hotel and Restaurant Employees' and Bartenders' International Union, A.F.L.-C.I.O. and C.L.C. (Applicant) v. Seaway Hotels (Ontario) Limited (Respondent). (6 employees).

0347-76-R: Office and Professional Employees International Union, Local No. 343, AFL-CIO-CLC (Applicant) v. Labourers International Union, Local No. 1059 of N.A. (Respondent). (3 employees).

0351-76-R: Sheet Metal Workers' International Association Local Union # 504 (Applicant) v. Indian Bay Limited (Respondent) v. Christian Labour Association of Canada (Intervener). (4 employees).

0433-76-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union No. 647, affiliated with the International Brotherhood of Teamsters Chauffeurs, Warehousemen and Helpers of America (Applicant) v. The Borden Company, Limited (Respondent). (14 employees).

0441-76-R: Labourers' International Union of North America, Local 527 (Applicant) v. Murray R. Gray Limited (Respondent). (3 employees).

0461-76-R: Labourers' International Union of North America, Local 183 (Applicant) v. Pigott Construction Limited (Respondent) v. Carpenters' District Council of Toronto on behalf of Locals 27, 666, 681, 1133, 1747, 1963, 3227, 3233 (Intervener #1) v. The General Contractors' Section of The Toronto Construction Association (Intervener #2). (7 employees).

0464-76-R: Local Union 1190, United Brotherhood of Carpenters and Joiners of America (Applicant) v. P. N. Carpenter (Respondent). (11 employees).

Certification Dismissed Subsequent to Pre-Hearing Vote

1809-75-R: Amalgamated Meat Cutters and Butcher workmen of North America, A.F.L.-C.I.O.-C.L.C. (Applicant) v. Robin Hood Multifoods Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at 50 Torlake Crescent, Toronto, save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation period." (35 employees in the unit).

Number of names of persons on original voters list		31
Number of persons who cast ballots		30
Number of ballots marked in favour of applicant	12	
Number of ballots marked against applicant	18	

1923-75-R: Ottawa Typographical Union, Local 102 (Applicant) v. Imprimerie Prescott et Russell Ltée (Respondent) v. Group of Employees (Objectors).

Voting Constituency: "Tous les employés qui son admissibles à devenir membres de l'Association. Les employés admissibles son les employés reguliers qui ne font pas partie de la direction générale de la Compagnie ou qui ne son pas membres du conseil d'administration. Les postes suivants son définis comme faisant partie de la direction générale de la Compagnie: 1; Directeur de l'Information; 2; Directeur du bureau; 3; directeur des Ventes; 4; Directeur du tirage, 5; Directeur de l'Imprimerie; 6; Directeur de l'Imprimerie Regent." (36 employees).

Number of names of persons on original voters list		27
Number of persons who cast ballots		27
Number of segregated ballots cast by persons whose name appear on voters' list	2	
Number of ballots marked in favour of applicant	12	
Number of ballots marked against applicant	13	

0290-76-R: United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC (Applicant) v. Firestone Canada Ltd. - Ltee.

Voting Constituency: "All office, factory clerical and technical employees of the respondent employed at its Head Office (including those employed at the Hamilton Harbour Commission building), Plant and Hamilton warehouse at 1579 Burlington Street East in the City of Hamilton, Ontario and its warehouse in Stoney Creek, Ontario (excluding persons employed at that location in the District Sales Office), save and except supervisors, foremen, persons above the rank of supervisor and foreman, persons employed in the Industrial Engineers Department Persons employed in the Personnel Department, persons employed in the Industrial Relations Department, secretaries to Department Managers and those above the rank of Department Manager, sales representatives, security guards,

persons listed in the classifications set out in schedule A as attached hereto, students employed during the school vacation period, students employed on a university, college co-operative training program, persons regularly employed for not more than 24 hours per week and persons covered by a subsisting collective agreement between the respondent and Local 113 of the applicant." (319 employees). (*clarity note* – see Report of full decision [1976] OLRB Rep. June).

Number of names of persons on revised voters' list		265
Number of persons who cast ballots	250	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	88	
Number of ballots marked against applicant	161	

0305-76-R: Local Union 800 of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of The United States and Canada (Applicant) v. Levert Construction Limited (Respondent).

Voting Constituency: "All employees of the respondent employed at construction work engaged in Plumbing, Steam Fitting, Gas Fitting, Welding and apprentices, working within a fifty mile radius of the Timmins Federal Building, save and except non-working foremen and persons above the rank of non-working foreman." (42 employees in the unit).

Number of names of persons on revised voters list		20
Number of persons who cast ballots	20	
Number of ballots marked in favour of applicant	3	
Number of ballots marked against applicant	17	

Certification Dismissed Subsequent to Post-Hearing Vote

1904-75-R: Canadian Food and Allied Workers Local Union 633, Chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. Gordons Super Markets Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all meat department employees of the respondent at its retail stores at Tillbury, save and except store managers and persons above the rank of store manager, persons regularly employed for not more than twenty-four hours per week and students employed in off school hours and during the school vacation period." (3 employees in the unit).

Number of names of persons on list as originally prepared by employer		3
Number of persons who cast ballots	3	
Number of ballots marked in favour of applicant	1	
Number of ballots marked against applicant	2	

1905-75-R: Canadian Food and Allied Workers Local Union 633, Chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. Gordons Super Markets Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all meat department employees of the respondent at its retail stores at Chatham save and except store managers, persons above the rank of store manager, persons regularly employed for not more than twenty-four (24) hours per week and students employed in off school hours and during the school vacation period." (17 employees in the unit).

Number of names of persons on list as originally prepared by employer			17
Number of persons who cast ballots		17	
Number of ballots marked in favour of applicant	3		
Number of ballots marked against applicant	14		

0017-76-R: Local 1590, International Brotherhood of Electrical Workers (Applicant) v. A.B. Chance Company of Canada Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Metropolitan Toronto save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation period." (28 employees in the unit).

Number of names of persons on list as originally prepared by employer			27
Number of persons who cast ballots		26	
Number of spoiled ballots	1		
Number of ballots marked in favour of applicant	3		
Number of ballots marked against applicant	22		

0024-76-R: Bakery & Confectionery Workers' International Union of America, Local 264 (Applicant) v. Central Bakery of Toronto Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of Central Bakery of Toronto Limited, Metropolitan Toronto, Ontario, save and except foremen foreladies, persons above the rank of foreman and forelady, drivers, office staff and persons regularly employed for not more than 24 hours per week and persons employed during the school vacation period." (37 employees in the unit).

Number of names of revised voters' list			30
Number of persons who cast ballots		31	
Ballots segregated and not counted	1		
Number of spoiled ballots	2		
Number of ballots marked in favour of applicant	5		
Number of ballots marked against applicant	23		

0107-76-R: Labourers' International Union of North America, Local 506 (Applicant) v. Oaks Precast Industries Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent working at or out of its plant on Rodick Road, Markham, Ontario save and except, foremen, persons above the rank of foreman, dispatcher, office and sales staff and students employed during the school vacation period." (17 employees in the unit).

Number of names of persons on list as originally prepared by employer			18
Number of persons who cast ballots		16	
Number of spoiled ballots	1		
Number of ballots marked in favour of applicant	3		
Number of ballots marked against applicant	12		

APPLICATIONS FOR CERTIFICATION WITHDRAWN

0223-76-R: Labourers' International Union of North America, Local 183 (Applicant) v. Pigott Construction Limited (Respondent) v. The General Contractors' Section of The Toronto Construction Association (Intervener #1) v. Local 598 of The Operative Plasterers' and Cement Masons' International Association of the U.S.A. and Canada (Intervener #2) v. Labourers' International Union of North America, Local 506 (Intervener #3) v. Carpenters' District Council of Toronto on behalf of Locals 27, 666, 681, 1133, 1963, 3227 and 3233 (Intervener #4). (12 employees).

0425-76-R: Labourers International Union of North America, Local 491 (Applicant) v. Timmins Gravel Products Co. Ltd. (Respondent). (10 employees).

0429-76-R: Upholsterers International Union of North America AFL/CIO (Applicant) v. Craftline Industries and Craftique Originals A Division of Craftline Industries (Respondent). (153 employees).

0466-76-R: Labourers' International Union of North America, Local 527 (Applicant) v. H. J. McFarland Construction Co. Ltd. (Respondent). (4 employees).

0486-76-R: Labourers' International Union of North America Local 1081 (Applicant) v. McLean Foster Construction Ltd. (Respondent). (3 employees).

0563-76-R: The Hotel & Club Employees Union Local 299 of the Hotel and Restaurant Employees and Bartenders International Union (A.F.L.-C.I.O.-C.L.C.) (Applicant) v. CN Tower Restaurants Ltd. (A Division of CN Hotels) (Respondent). (20 employees).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

0178-76-R: Doreen Constance Rogers (Applicant) v. The International Association of Machinists and Aerospace Workers (Respondent). (*Granted*).

Unit: "all office and clerical employees of Orenstein & Koppel Canada Ltd. at its office in Dundas, save and except persons covered by the Collective Agreement between Orenstein & Koppel Canada Ltd. and Hamilton Draftsmen's Association Unit #2, senior clerks and persons above the rank of senior clerk, senior stenographers who act as private secretaries to department heads or persons above that rank, persons on the hourly payroll who work in the production units of Orenstein & Koppel Canada Ltd., and time study men." (10 employees in the unit).

Number of names of persons on list as originally prepared by employer		10
Number of persons who cast ballots		10
Number of ballots marked in favour of respondent	4	
Number of ballots marked against respondent *	6	

0215-76-R: Donald Joss (Applicant) v. United Steelworkers of America, Local 16503 (Respondent) v. Star Steel Ltd. (Intervener). (not stated employees). (*Terminated*).

0344-76-R: Rosedale Residence Employees (Applicant) v. Service Employees Union, Local 204 (Respondent). (9 employees). (*Terminated*).

0483-76-R: Canada Glazed Papers, Subsidiary of Rolland paper Company, Limited (Applicant) v. Canadian Union of Operating Engineers Local 101 (Respondent). (no employees). (*Terminated*).

APPLICATIONS FOR DECLARATION OF SUCCESSOR STATUS

1889-75-R: International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (U.A.W.) (Applicant) v. Standard Tube Canada Limited (Respondent) v. Standard Tube Employees' Trade Union (Predecessor Trade Union) v. Group of Employees (Objectors). (*Dismissed*).

1926-75-R: United Brotherhood of Carpenters and Joiners of America, Local Union 93 (Applicant) v. Paul D'Aoust Construction Limited (Respondent). (*Granted*).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL

1865-75-U: Unifin Division of Keeprite Products Limited (Applicant) v. R.F. Nickerson, on his own behalf of the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (U.A.W.) and its Local 27 and the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, (U.A.W.) and its Local 27 (Respondents). (*Dismissed*).

0350-76-U: Arthur G. McKee and Company of Canada Limited (Applicant) v. P. Atkins, et al (Respondents). (*Withdrawn*).

0381-76-U: St. Josephs Hospital (Guelph) and the Hospitals Listed in Appendix "A" (Applicants) v. Thomas Edwards, Emma Pryor, Elisabeth Brokmann, Frank Rochetta, Minerva McCauley, Michael Deveault, Carol E. Dufresne, Harold Wrightman, B. Drane and Pat Kenny and Canadian Union of Public Employees and its Local Unions Listed in Appendix "B" (Respondents). (*Granted*).

0397-76-U: Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 141 (Applicant) v. Harry Woods Transport Limited (Respondent). (*Dismissed*).

0450-76-U: The Lummus Company Canada Limited (Applicant) v. John Anderson et al. (Respondents). (*Withdrawn*).

0491-76-U: The de Havilland Aircraft of Canada Limited (Applicant) v. Jerome P. Dias, and Local 112, United Automobile, Aero-Space and Agricultural Implement Workers of America (Respondents). (*Dismissed*).

0493-76-U: King Paving & Materials Division of the Flintkote Company of Canada Limited (Applicant) v. Teamsters Local Union, No. 879 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, and Leonard O. Schultz, business representative, Teamsters, Local No. 879 (Respondents). (*Direction*).

0497-76-U: Bechtel Canada Ltd. (Applicant) v. A. Desousa, et al (See Schedule A attached hereto) (Respondents). (*Direction*).

0506-76-U: Ready-Mix Building Supply, Hydro & Construction Drivers, Warehousemen and Helpers Local 230 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Michael Bros. Excavating a Division of/or Operated by Royal Excavating and Grading Limited (Respondent). (*Withdrawn*).

0534-76-U: Canadian Canners Limited Can Plant No. 93 (Applicant) v. Leslie Acs et al (Respondents). (*Withdrawn*).

0535-76-U: Reed Ltd. (Applicant) v. Those persons named in Schedules "A", "B", "C", "D", "E" and "F" to this Application (Respondents). (*Granted*).

APPLICATION FOR DECLARATION THAT LOCK-OUT UNLAWFUL

0392-76-U: Ready-Mix, Building Supply, Hydro & Construction Drivers Warehousemen and Helpers, Local 230, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Michael Bros. Excavating a Division of/or operated by Royal Excavating and Trading Limited (Respondent). (*Granted*).

APPLICATIONS FOR CONSENT TO PROSECUTE

1775-75-U: United Plant Guard Workers, Local 1962 (Applicant) v. Flamboro Downs Holdings Limited (Respondent). (*Granted*).

0113-76-U: The Essex County Roman Catholic Separate School Board (Applicant) v. Canadian Union of Public Employees and its Local 1358 Technical Unit, and Margaret Villamizar, Stephen Henri, Andrea Pinto Rev. Fr. Douglas Mercer, Patricia Devaney Leonard Gignac, Clarice Fallett and Marie Dinham (Respondents). (*Withdrawn*).

0144-76-U: Bakery & Confectionery Workers' International Union of America, Local 264 (Applicant) v. Central Bakery Toronto Limited (Respondent). (*Withdrawn*).

0212-76-U: International Brotherhood of Electrical Workers, Local Union 353 (Applicant) v. Kroman's Electric Limited and Adolf Kroman (Respondent). (*Terminated*).

0248-76-U: International Brotherhood of Electrical Workers, Local Union 353 (Applicant) v. Sala Electric Limited, Mario Parente and Angelo Parente (Respondents). (*Withdrawn*).

0507-76-U: Ready-Mix Building Supply, Hydro & Construction Drivers, Warehousemen and Helpers local 230 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Michael Bros. Excavating a Division of/or Operated by Royal Excavating and Grading Limited (Respondent). (*Withdrawn*).

COMPLAINTS UNDER SECTION 79 (UNFAIR LABOUR PRACTICE)

- 7190-74-U:** Saverio A. Greco (Complainant) v. Local Union No. 598 of the Operative Plasterers' and Cement Mason's International Association of the U.S. and Canada (Respondent). (*Dismissed*).
- 7247-74-U:** Saverio A. Greco (Complainant) v. Local Union No. 598 of the Operative Plasterers' and Cement Masons' Int'l Association of the U.S. and Canada (Respondent). (*Dismissed*).
- 7313-74-U:** Saverio A. Greco Cement Finisher Local 598 (Complainant) v. A. Frank Amis Business Agent Local 598 (and Charles W. Irvine, International Vice-President). (Respondents). (*Granted*).
- 0926-75-U:** Toronto Newspaper Guild, Local 87 (Complainant) v. The Globe & Mail Limited (Respondent). (*Dismissed*).
- 1584-75-U:** Canadian Textile & Chemical Union (Complainant) v. Artistic Woodwork Co. Limited (Respondent). (*Withdrawn*).
- 1636-75-U:** Lewis Stevens, Member – Heat Transfer Workers Union (Complainant) v. Heat Transfer Workers Union Ex. Committee (Respondent). (*Dismissed*).
- 1655-75-U:** Mr. Ismail Kureshi (Complainant) v. Artistic Woodwork Co. Limited (Respondent). (*Withdrawn*).
- 1680-75-U:** Teamsters Union Local 1000 (Complainant) v. Pop Shoppe (Toronto) Limited (Respondent). (*Granted*).
- 1709-75-U:** Service Employees Union, Local 204 (Complainant) v. Birchcliffe Nursing Homes Ltd. (Respondent). (*Withdrawn*).
- 1716-75-U:** Mr. Mohamed Khote (Complainant) v. Artistic Woodwork Co. Ltd. (Respondent). (*Withdrawn*).
- 1776-75-U:** United Plant Guard Workers, Local 1962 (Complainant) v. Flamboro Downs Holdings Limited (Respondent). (*Dismissed*).
- 1880-75-U:** United Steelworkers of America (Complainant) v. Renown Steel and Service Ltd. (Respondent). (*Withdrawn*).
- 1881-75-U:** United Steelworkers of America (Complainant) v. Renown Steel and Service Ltd. (Respondent). (*Withdrawn*).
- 1890-75-U:** Teamsters Union Local 1000 (Complainant) v. Pop Shoppe (Toronto) Limited (Respondent). (*Granted*).
- 1936-75-U:** United Steelworkers of America (Complainant) v. Renown Steel and Service Ltd. (Respondent). (*Withdrawn*).

0085-76-U: Sammy Lovano (Complainant) v. Pre-Fab Cushioning & Vita Foam Ltd. (Respondent). (*Dismissed*).

0097-76-U: John Christopher (Complainant) v. Pre-Fab Cushioning Prod. Ltd. (Respondent). (*Dismissed*).

0170-76-U: Gerald Franciss LaRiviere (Complainant) v. Burlington Steel Company, Division of Slater Steel; and United Steelworkers Union, Local 4752 (Respondents). (*Withdrawn*).

0171-76-U: John Stasila (Complainant) v. Burlington Steel Company, Division of Slater Steel; and United Steelworkers Union, Local 4752 (Respondents). (*Withdrawn*).

0172-76-U: Jack Dalton Rayner (Complainant) v. Burlington Steel Company, Division of Slater Steel; and United Steelworkers Union, Local 4752 (Respondents). (*Withdrawn*).

1083-76-U: Toronto Printing Pressmen and Assistants' Union, #10, (Pressmen) (Complainant) v. Photo Engravers and Electrotypers Limited (Respondent). (*Withdrawn*).

0213-76-U: International Brotherhood of Electrical Workers, Local Union 353 (Complainant) v. Kroman's Electric Limited and Adolf Kroman (Respondent). (*Terminated*).

0249-76-U: International Brotherhood of Electrical Workers, Local Union 353 (Complainant) v. Sala Electric Limited, Mario Parente and Angelo Parente (Respondents). (*Terminated*).

0252-76-U: Retail Clerks International Association (Complainant) v. Safeguard Drug Limited (Respondent). (*Withdrawn*).

0259-76-U: Reginald Stanley Harcourt (Complainant) v. Canadian Union of Public Employees and its Local 1749 (Respondent). (*Withdrawn*).

0261-76-U: David Matthews (Complainant) v. The Hotel and Club Employees' Union Local 299, Toronto, affiliated with The Hotel and Restaurant Employees and Bartenders' International Union, AFL-CIO-CLC (Respondent). (*Dismissed*).

0283-76-U: Retail Clerks Union, Local 206 (Complainant) v. Niagara Farms Market (Respondent). (*Withdrawn*).

0304-76-U: Christian Labour Association of Canada (Complainant) v. Harrison-Martyn Construction Limited et al (Respondents). (*Granted*).

0346-76-U: Lillian Peppard (Complainant) v. Christian Trade Union and Unger Nursing Home Ltd. (Respondents). (*Withdrawn*).

0376-76-U: Labourers' International Union of North America, Local 1036 (Complainant) v. George Ryder Construction Limited, George Ryder, George Riffer and Pentti Koskela (Respondents). (*Granted*).

- 0379-76-U:** Mr. Atamanchuk (Complainant) v. U.A.W. Local 707 (Respondent). (*Withdrawn*).
- 0383-76-U:** Arthur Christie (Complainant) v. International Chemical Workers Union, Local 817, International Chemical Workers Union, John Brennan, and Somerville Industries Ltd. (Respondents). (*Withdrawn*).
- 0393-76-U:** Retail Clerks International Association, Local 409 (Complainant) v. Zalgir Investments Incorporated (Respondent). (*Withdrawn*).
- 0406-76-U:** Ontario Nurses' Association (Complainant) v. Golden Manor-Timmins Home for the Aged (Respondent). (*Withdrawn*).
- 0414-76-U:** Canadian Union of Public Employees and its Local Unions Listed in Appendix "A" (Complainants) v. St. Joseph's Hospital (Guelph) and the Hospitals Listed in Appendix "B" (Respondents). (*Granted*).
- 0420-76-U:** William C. Berrigan (Complainant) v. National Grocers Chatham Ont. (Respondent). (*Withdrawn*).
- 0444-76-U:** Dominic Ricci (Complainant) v. Central Bakery of Toronto Limited (Respondent). (*Withdrawn*).
- 0458-76-U:** Service Employees Union, Local 204 (Complainant) v. Christie Park Nursing Homes Limited (Respondent). (*Withdrawn*).
- 0533-76-U:** Richard Walker (Complainant) v. Retail, Wholesale, Dept. Store Union, its servants and Agents (Respondents). (*Withdrawn*).
- 0550-76-U:** Service Employees Union, Local 204 (Complainant) v. Christie Park Nursing Homes limited (Respondent). (*Withdrawn*).
- 0553-76-U:** The Canadian Brotherhood of Railway Transport & General Workers (Complainant) v. Preston Feed & Seed Limited (Respondent). (*Withdrawn*).

APPLICATION UNDER SECTION 39

- 0109-76-M:** Cindy Campbell (Applicant) v. Ontario Public Service Employees Union (Respondent Employee Organization) v. Centennial College of Applied Arts and Technology (Respondent Employer or Agency of the Employer). (*Granted*).

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

0326-76-M: Laundry, Dry Cleaning and Dye House Workers' International Union, Local 351 (Trade Union) v. Work Wear Corporation of Canada Ltd., formerly Belle Cleaners & Launderers Limited (Employer). (*Granted*).

0359-76-M: United Steelworkers of America, CLC Local Union No. 6547 (Trade Union) v. Hill Refrigeration of Canada Ltd. (Employer). (*Granted*).

APPLICATION UNDER SECTION 55

0897-75-R: Retail Clerks Union, Local 206 and 486 Chartered by the Retail Clerks International Association (Applicant) v. G. Tamblyn Limited (Respondent). (*Granted*).

APPLICATION UNDER SECTION 76 (FINANCIAL STATEMENT REQUESTED BY TRADE UNION MEMBER)

0310-76-M: A.A. Da Silva (Complainant) v. Donald Roach (Respondent). (*Terminated*).

JURISDICTIONAL DISPUTE

0550-75-R: Canadian Union of Public Employees – CLC – Ontario Hydro Employees Union Local 1000 (Complainant) v. The Hydro Electric Power Commission of Ontario and International Brotherhood of Electrical Workers Local 1788 (Respondent). (*Granted*).

APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2)

0017-75-M: The Canadian Union of Public Employees on its behalf and on behalf of its Local 1221 (Applicant) v. T.L.C. Villa Nursing Centre (Respondent). (*Terminated*).

0564-75-M: International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Applicant) v. Dehavilland Aircraft of Canada Ltd. (Respondent). (*Withdrawn*).

0898-75-M: Retail Clerks Union, Local 206 and 486 Chartered by the Retail Clerks International Association (Applicant) v. G. Tamblyn Limited (Respondent). (*Granted*).

0111-76-M: Canadian Union of Public employees and its Local 251 (Applicant) v. The Corporation of the City of Oshawa (Respondent). (*Granted*).

REFERENCE TO BOARD PURSUANT TO SECTION 96

0316-76-M: G. M. Gest Limited (Employer) v. Labourers' International Union of North America, Local 183 (Trade Union). (*Terminated*).

APPLICATIONS UNDER SECTION 112a

1489-75-M: Christian Labour Association of Canada (Applicant) v. Smith & Elston Company Limited (Respondent). (*Withdrawn*).

1497-75-M: The International Association of Heat and Frost Insulators and Asbestos Workers, Local 95 (Applicant) v. Sovereign Insulation Canada Limited (Respondent). (*Granted*).

1553-75-M: International Union of Elevator Constructors Local 90 (Applicant) v. Canadian Elevator Manufacturers Association a Division of the Canadian Electric Manufacturers Association and Montgomery Elevator Co., Limited (Respondents). (*Granted*).

0286-76-M: Local Union 353, International Brotherhood of Electrical Workers (Applicant) v. Duern Electric Limited and Electrical Contractors Association of Toronto (Respondents). (*Granted*).

0368-76-M: Labourers' International Union of North America, Local 183 (Applicant) v. L.J.S. Construction Ltd. (Respondent). (*Withdrawn*).

0398-76-M: Labourers' International Union of North America, Local 183 (Applicant) v. William Noworthy Excavating Ltd. (Respondent). (*Withdrawn*).

0399-76-M: Labourers' International Union of North America, Local 183 (Applicant) v. West York Construction (Respondent). (*Withdrawn*).

0435-76-M: Christian Labour Association of Canada (Applicant) v. Smith & Elston Company Ltd. (Respondent). (*Withdrawn*).

0438-76-M: Labourers' International Union of North America, Local 527 (Applicant) v. M. Sullivan & Son Limited (Respondent). (*Withdrawn*).

0439-76-M: Labourers' International Union of North America, Local 427 (Applicant) v. Beaver Underground Limited (Respondent). (*Withdrawn*).

0457-76-M: Ontario Provincial Conference of Bricklayers Masons and Plasterers International Union of America Local No. 3 Guelph (Applicant) v. Stradiotto Bros Construction Limited (Respondent). (*Withdrawn*).

0471-76-M: Labourers' International Union of North America, Local 183 (Applicant) v. Franki Canada Ltd. (Respondent). (*Withdrawn*).

0477-76-M: Labourers' International Union of N.A. Local Union 1089 (Applicant) v. Marentette Brothers, Limited (Respondent). (*Withdrawn*).

0494-76-M: Labourers' International Union of North America, Local 183 (Applicant) v. Palurema Contractors Ltd. (Respondent). (*Withdrawn*).

0508-76-M: Ready-Mix Building Supply, Hydro & Construction Drivers, Warehousemen and Helpers Local 230 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Michael Bros. Excavating a Division of/or Operated by Royal Excavating and Grading Limited (Respondent). (*Withdrawn*).

0513-76-M: International Brotherhood of Painters and Allied Trades, Local Union 1891 (Applicant) v. Ben Plastering Limited, c.o.b. as Belmont Plastering Co. (Respondent). (*Withdrawn*).

0514-76-M: International Brotherhood of Painters and Allied Trades, Local Union 1891 (Applicant) v. Romano Texture Spray Ltd. (Respondent). (*Withdrawn*).

0538-76-M: Labourers' International Union of North America, Local 527 (Applicant) v. The National Capital Road Builders' Association Dibblee Construction Limited (Respondents). (*Withdrawn*).

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

0087-76-R: International Brotherhood of Electrical Workers Local Union 353 (Applicant) v. Benda Electrical Workers Local Union 353 (Applicant) v. Benda Electric Contractor Limited (Respondent) v. Group of Employees (Objectors). (*Request Denied*).

0884-75-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Western Caissons (Man.) Limited (Respondent). (*Request Denied*).

0303-76-U: United Steelworkers of America (Complainant) v. Venco Metals Limited and Victoria Engineering Limited (Respondents). (Section 79). (*Request Denied*).

0322-76-M: Bechtel Canada Limited (Employer) v. International Association of Bridge, Structural and Ornamental Iron Workers - Local Union # 700 (Trade Union). (Section 96). (*Request Denied*).

0136-76-M: International Union of Operating Engineers, Local 793 (Applicant) v. Horton CBI, Limited (Respondent). (Section 112a). (*Request Denied*).



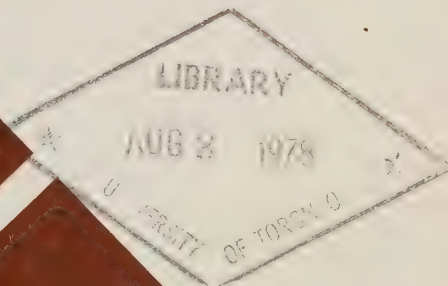
Labour
Relations Board

Ontario

Decisions July 76

Government
Publications

CA20N
LR
-054



ONTARIO LABOUR RELATIONS BOARD

<i>Chairman</i>	D.D. CARTER
<i>Alternate Chairman</i>	RORY F. EGAN
<i>Vice-Chairmen</i>	F.V. BOSCARIOL K.M. BURKETT G.S.P. FERGUSON, Q.C. R.A. FURNESS D.H. KATES M. G. PICHER P. C. PICHER I.C.A. SPRINGATE
<i>Members</i>	H.J.F. ADE D.B. ARCHER J.D. BELL E. BOYER F. KEEN A. GRIBBEN L. HEMSWORTH A. HERSHICOVITZ O. HODGES F.W. MURRAY P.J. O'KEEFFE J.E.C. ROBINSON, Q.C. N. SATTERFIELD H. SIMON R. WHITE W.H. WIGHTMAN

<i>Executive Assistant to the Chairman</i>	S.D. SAXE	<i>Registrar</i>	A.M. BRUNSKILL
--	-----------	------------------	----------------

<i>Solicitor</i>	R.O. MACDOWELL
------------------	----------------

<i>Editor, Monthly Report</i>	S.D. SAXE
-------------------------------	-----------

ONTARIO LABOUR RELATIONS BOARD REPORTS

**A Monthly Series of Decisions from the
Ontario Labour Relations Board**

Cited [1976] OLRB REP.

Selected decisions of particular reference value are also reported in *Canadian Labour Relations Boards Reports*, Butterworth & Co., Toronto.

CASES REPORTED

Borden Co. Ltd., Ingersoll, Ont., The, And CUOE, L 105	379
Country Village Inc. Re Serv. Employees U., L 210, aff'l SEIU, AFL-CIO-CLC And Group of Employees	373
Custom Converters Printers Ltd. Re Cdn. Chemical Workers. U	357
de Havilland Aircraft of Canada Ltd. The, And Jerome P. Dias, & L 112, UAW	383
Delcon Electric Ltd. Re Chatham Const. Workers Assoc., L 53, aff'l CLAC	362
Harry Woods Transport Ltd. Re TCWH, L 141	341
Intercity Food Services Inc. Re CFAW L U 725, Chartered by Amalgamated Meat Cut- ters & Butcher Workmen of N. America, AFL-CIO-CLC	388
Leons Furniture Ltd. Re Retail Clerks, U., L. 206	389
Livingston Transportation Ltd. Re TCWH, L 141	346
Mount Citadel Ltd. Re LIU, L 183	367
Standard Tube Canada Ltd. Re UAW And Standard Tube Employees' Trade U. And Group of Employees	375
Tamblyn, G., Ltd. Re RWDSU, AFL:CIO:CLC	369
USA, L 7135 Re Jay Sussman	349
Veres Wire Industry Ltd. Re USA	337
Wellesley Hospital, The, Re CUOE	364
Wilson-Munroe Co., Employees, (Div. of Fine Paper Ltd.) And Cdn. Paperworkers U., L. 1291 And Wilson-Munroe Co.	385
Winson Const. Ltd. Re LIU, 493 And Group of Employees	361

INDEX OF CASES

- Abandonment – Effect of employer continuing dues check off and remittance during five year period of no other contact with union – Effect of employee continuing dues check off.
THE BORDEN COMPANY LIMITED, INGERSOLL, ONTARIO v. CANADIAN UNION OF OPERATING ENGINEERS, LOCAL 105 379
- Bargaining Unit – Part-time – Whether all categories included in full time unit will be included in part-time unit even when there are no part-time employees in some of the categories.
RETAIL CLERKS UNION, LOCAL 206 v. LEONS FURNITURE LIMITED ... 389
- Certification – Part-time unit – Whether Board will entertain request for a part-time unit during the hearing when the list of employees is being resolved after the bargaining unit has been settled.
CANADIAN FOOD AND ALLIED WORKERS LOCAL UNION 725, CHARTERED BY THE AMALGAMATED MEAT CUTTERS AND BUTCHER WORKMEN OF NORTH AMERICA, AFL-CIO-CLC v. INTERCITY FOOD SERVICES INC. 388
- Certification – Pre-Hearing Vote – S7a – Whether holding a pre-hearing vote precludes certification pursuant to S7a – Whether participating in pre-hearing vote estoppes applicant from applying under S7a.
LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION #493 v. WINSON CONSTRUCTION LIMITED v. GROUP OF EMPLOYEES 361
- Certification – Trade Union – Membership Evidence – Effect of foreman participating in the formation of trade union and collection of membership evidence – Whether employer should intervene to instruct a foreman not to participate in organizational campaign.
UNITED STEELWORKERS OF AMERICA v. VERES WIRE INDUSTRY LTD. 337
- Certification – Whether receiver-manager or company the employer where company placed in receivership – Effect of union naming company as employer.
LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 v. MOUNT CITADEL LIMITED 367
- Change in Working Conditions – S70 – Whether change in long term overtime policy prohibited where prior collective agreement silent – Whether anti-union animus required for a violation – Whether government restraint policy a reason for Board not ordering full compensation.
CANADIAN UNION OF OPERATING ENGINEERS v. THE WELLESLEY HOSPITAL 364
- Discharge For Union Activity – S79(4a) – Quit or discharge – Effect of management having provoked termination.

CANADIAN CHEMICAL WORKERS UNION v. CUSTOM CONVERTERS PRINTERS LIMITED	357
Duty of Fair Representation – S60 – Whether trade union officials must actively seek out grievor once aware of grievance to ensure grievor is satisfied with its resolution – Whether grievor’s activities to encourage employees to take stronger action than recommended by union in response to pending layoff motivated union violation of duty of fair representation.	
JAY SUSSMAN v. UNITED STEELWORKERS OF AMERICA, LOCAL 7135 ..	349
Employee – S1(3)(b) – Whether pharmacy managers excluded.	
RETAIL, WHOLESALE AND DEPARTMENT STORE UNION, ALF:CIO:-CLC v. G. TAMBLYN LIMITED	369
Lock-Out – Whether lock-out or closing down of operations for financial reasons.	
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 141 v. LIVINGSTON TRANSPORTATION LIMITED	346
Lock-Out – Whether terminations by a company in difficult economic circumstances constituted a lock-out when they followed a refusal by the union to renegotiate terms of collective agreement – Effect of employer still hoping to continue in business.	
TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, LOCAL 141 v. HARRY WOODS TRANSPORT LIMITED	341
Membership Evidence – Certification – Trade Union – Effect of foreman participating in the formation of trade union and collection of membership evidence – Whether employer should intervene to instruct a foreman not to participate in organizational campaign.	
UNITED STEELWORKERS OF AMERICA v. VERES WIRE INDUSTRY LTD.	337
Membership Evidence – Form 8 – Effect of person signing form 8 not having a chain of inquiry to all collectors.	
SERVICE EMPLOYEES UNION, LOCAL 210, AFFILIATED WITH SERVICE EMPLOYEES INTERNATIONAL UNION, AFL-CIO-CLC v. COUNTRY VILLAGE INC. v. GROUP OF EMPLOYEES	373
Parties – Whether trade union signing members after certification of another bargaining agent a proper party in original certification proceedings.	
CHATHAM CONSTRUCTION WORKERS ASSOCIATION, LOCAL NO. 53, AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA v. DELCON ELECTRIC LIMITED	362
Pre-Hearing Vote – Certification – S7a – Whether holding a pre-hearing vote precludes certification pursuant to S7a – Whether participating in pre-hearing vote estoppes applicant from applying under S7a.	
LABOURERS INTERNATIONAL UNION OF NORTH AMERICA, LOCAL UNION #493 v. WINSON CONSTRUCTION LIMITED v. GROUP OF EMPLOYEES	361

Strike – S82 – Threatening Strike – Effect of union leader saying “If I had my way” a work stoppage would occur.	
THE de HAVILLAND AIRCRAFT OF CANADA LIMITED v. JEROME P. DIAD, AND LOCAL 112, UNITED AUTOMOBILE, AERO-SPACE AND AGRICULTURAL IMPLEMENT WORKERS OF AMERICA	383
Successor Status – Effect of improper notice of meeting at which Affiliation provisions of Predecessor Union’s Constitution were amended.	
INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (U.A.W.) v. STANDARD TUBE EMPLOYEES’ TRADE UNION v. GROUP OF EMPLOYEES	375
Termination – Petition – Effect of organizer of petition approaching management, after filing of petition, for suggestions as to counsel.	
WILSON-MUNROE COMPANY, EMPLOYEES, (DIVISION OF FINE PAPER LTD.) v. CANADIAN PAPERWORKERS UNION, LOCAL 1291 v. WILSON-MUNROE COMPANY	385
Trade Union – Membership Evidence – Certification – Effect of foreman participating in the formation of trade union and collection of membership evidence – Whether employer should intervene to instruct a foreman not to participate in organizational campaign.	
UNITED STEELWORKERS OF AMERICA v. VERES WIRE INDUSTRY LTD	337

1774-75-R United Steelworkers of America, (Applicant), v. Veres Wire Industry Ltd., (Respondent).

Trade Union – Membership Evidence – Certification – Effect of foreman participating in the formation of trade union and collection of membership evidence – Whether employer should intervene to instruct a foreman not to participate in organizational campaign.

BEFORE: D. H. Kates, Vice-Chairman, and Board Members A. Gribben and F. W. Murray.

APPEARANCES: *L. Ingle and P. Grasso for the applicant; D. I. Wakely and S. Veres for the respondent.*

DECISION OF THE BOARD: July 26, 1976

1. Pursuant to the Board's decision dated March 23, 1976, appointing a Labour Relations Officer to inquire into the duties and responsibilities of Mr. Ivan Gallegos, classified as foreman supervisor, a hearing was directed upon request of the respondent for the purpose of entertaining submissions with respect to the issues arising out of the Report. Prior to the hearing scheduled for July 14, 1976 the Registrar further advised that the Board would entertain evidence and submissions in connection with the respondent's allegations that the organizational campaign conducted by the applicant was tainted because of the role assumed by Mr. Gallegos in promoting the applicant's efforts to acquire bargaining rights.
2. Assuming Mr. Gallegos is a person exercising managerial functions within the purview of section 1(3)(b) of the Act, the parties appeared in basic agreement on the state of the Board's jurisprudence in dealing with the allegations propounded by the respondent. Quite clearly the assumption by a foreman (in the sense that he materially may affect the employment relationship of employees under his responsibility) of an integral role in a trade union's organizational campaign will result in placing the totality of the union's efforts in jeopardy. (See, *The Millwork and Building Supplies Co. Ltd.* case [1968] OLRB Rep. June 273 at p.275). The mischief contemplated by the prohibition of such participation is the concern of the Legislature that the arms-length relationship between the employer and the trade union as the freely designated representative of employees be preserved. (See, *The Metal Textile of Canada Ltd.* case [1974] OLRB Rep. November 694 at p.695). Notwithstanding the underlying rationale of this concern, the Board's cases appear to indicate that such impugned participation by a managerial person in a campaign may be overcome provided it is established that the trade union did not solicit or otherwise seek the benefits of employer participation and that the employees concerned knew or ought to be deemed to know that such participation was prejudicial to the employer's interests represented by the applicant trade union. (See; *The Air Liquide* case [1962] OLRB Rep. January 558; 64 CLLC ¶16,002 at p.635). The Board has concluded that in such cases although the foreman's participation may taint the membership cards directly secured by him on behalf of an applicant trade union, it does not necessarily undermine the totality of its efforts to acquire bargaining rights. (See, *The Acme Ruler Company Limited* case [1969] OLRB Rep. November 952 at p.955). Underlying this policy consideration is Board recognition that an employer ought not to take advantage of its own wrongdoing by the simple interjection of its representatives into a campaign with a view to undermining the honest desire of employees to the benefits of collective bargaining. (See; *The Air Liquide* case (supra) at p.636).

3. In the circumstances of the instant case the applicant has filed in support of its claim for bargaining rights 39 membership cards. Mr. Ivan Gallegos is shown to be the collector on three of those cards. The uncontradicted evidence however established that Mr. Gallegos played an integral and critical role in the applicant's organizational strategy. The background circumstances surrounding his participation was described by Mr. Pat Grasso, the applicant's business agent. He was contacted by telephone by three employees about having the applicant represent the respondent's production employees. The employees thereupon were invited to attend the applicant's offices in Metropolitan Toronto. A few days later Mr. Gallegos along with another employee, Mr. Benjamin Rojas, showed up at the Steelworkers Hall. At that time Mr. Grasso interviewed each and inquired of their duties and responsibilities. As a result of this conversation Mr. Grasso was satisfied that Mr. Gallegos as "a group leader" could properly participate in the organizational campaign. His view of Mr. Gallegos' job status was confirmed upon discussion with other employees in the bargaining unit. Mr. Grasso instructed the two employees of the Board's requirements for the membership cards including the payment of the dollar.

4. Mr. Gallegos accompanies Mr. Rojas in his attempts to persuade employees to sign membership cards. Apparently the production employees are of various ethnic and national backgrounds and Mr. Gallegos because of his multilingualism could help explain the purpose of the organizational drive to the employees. In any event the evidence is clear that Mr. Gallegos observed each employee whose signature Mr. Rojas is shown to have secured pen his name to the card. Mr. Rojas is shown as collector for thirty-two of the cards filed by the applicant. Later at a meeting attended by the collectors with respect to the terminations of two employees Mr. Gallegos returned the cards he was responsible for and was interviewed in connection with *The Declaration Concerning Membership Documents* (Form 8).

5. Mr. B. Psenicnik, the plant manager, advised that he learned of the rumours of a campaign prior to the terminal date in this matter and at that time learned of Mr. Gallegos' participation. After the application had been filed and the terminal date had passed Mr. Psenicnik conversed with Mr. Gallegos on the subject of his role in the campaign. The information adduced through Mr. Psenicnik with respect to their conversation was to a great extent confirmed by Mr. Grasso during the course of his testimony. The evidence shows that notwithstanding the rumours of the campaign and Mr. Gallegos' alleged role as organizer, Mr. Psenicnik did not interfere with the employees' efforts. The evidence also discloses that Mr. Psenicnik took no steps to disassociate the employer from the activities of its foreman with respect to that campaign. Mr. Gallegos, although in attendance at the hearing (and whose exclusion as a potential witness was requested by both parties) was not called to give evidence.

6. At the conclusion of the proceedings before the Labour Relations Officer both parties agreed that each was afforded full opportunity "to be heard, to examine and cross-examine and to introduce evidence bearing on the issues...". The accuracy and contents of the Report was not challenged although the respondent requested the opportunity to make submissions on the conclusions the Board ought to make as a result thereof. Although Mr. Grasso indicated in his testimony that the contents of the report were the opposite to the impression made upon him by Mr. Gallegos with respect to his job status during the course of his pre-campaign interview no attempt was made to attack the credibility of Mr. Gallegos before this Board. (See, *The Sovereign Construction Ltd.* case [1967] OLRB Rep. February 866; *The Barlin Scott Ltd.* case [1964] OLRB Rep. January 595). Indeed, the Report shows

the representative of the applicant declined to assume a penetrating posture with respect to Mr. Gallegos' statements at the Labour Relations Officer's inquiry. Mr. Grasso is shown to be in attendance at that inquiry. In other words, the Board is satisfied that the Labour Relations Officer's Report reflects an accurate, complete and untainted reflection of the duties and responsibilities of Mr. Gallegos at all material times of the organizational efforts of the applicant trade union.

7. Based on the contents of the Report we are satisfied that Mr. Gallegos is engaged exclusively in the supervision of the twenty-eight employees assigned to the respondent's welding department. In this capacity, he assigns work, monitors employees' job performance and admonishes and corrects employee shortcomings. He assesses work progress with respect to recommending wage increases, he grants time off and checks and initials mistakes on time cards. Mr. Gallegos is shown to participate in decisions relating to hiring, firing, transfers and promotions. He is a foreman in the true sense as contemplated under section 1(3)(b) of the Act. Of greater significance to the disposition of this application he is shown to be "the boss" of a vast majority of the members of the appropriate bargaining unit.

8. The Board is satisfied that the applicant trade union took no steps to succour the aid of the respondent employer in its efforts to organize its employees. The applicant through our experience is known not to be the type of organization that would tolerate being the recipient of the support that would prohibit it from being certified under section 12 of the Act. Moreover we are satisfied that the applicant through the efforts of Mr. Grasso did attempt to purge the campaign from any employer taint by virtue of the pre-campaign interview with Mr. Gallegos. Nonetheless, the issue submitted by the parties during the course of argument is the inferences the Board ought to draw on the voluntary wishes of employees as a result of Mr. Gallegos' participation in the campaign. Indeed, much of the argument centred upon whom, if anyone, lay the onus of establishing the legitimacy of its claim. And incidental to that matter arose the debate as to which party ought to have called Mr. Gallegos to adduce direct evidence of the extent of his role in the campaign and the nature of his relationship with the employees in the bargaining unit.

9. Firstly, it is suggested that by virtue of the absence of any evidence of any solicitation of employer support the onus remains on the respondent to establish that the employees' true wishes were inhibited by the foreman's participation in the campaign. In this regard, the evidence established that the plant manager heard rumours of the campaign and Mr. Gallegos' role as organizer, yet, did nothing to disassociate the respondent from wrongfully implicating the employer in the concerns of employees. In other words, does it lie in the mouth of the employer to disclaim responsibility for the prejudicial role of its management personnel and at the same time take advantage of their alleged wrongdoings?

10. On the other hand it is submitted that the applicant trade union must satisfy the Board that the membership cards filed in support of its claim to bargaining rights reflects the voluntary wishes of the signatories thereto. The respondent properly raised the issue of Mr. Gallegos' employment status and therefore if found to be a managerial person, the onus thereby shifts to the applicant to establish the voluntary nature of the membership documents in the context of the Board's past policy considerations. In other words, the obligation rests upon the applicant trade union to show that a person whom it represented as organizer was at all material times acting in a manner known to the affected employees to be prejudicial to the employer's interests.

11. The Board has weighed with some diffidence the worrisome dilemma raised by the parties with respect to the issues described herein. In the first instance, the Board is quite concerned that the employer ought not to take advantage of its agent's wrongdoings when it knows or ought to know in advance of an application for certification that their activities are clearly wrong. This Mr. Psenicnik recognized when after the terminal date he asked Mr. Gallegos "How could you do it?" By the same token, had the plant superintendent intervened and requested Mr. Gallegos to cease further participation in the applicant's efforts then he may very well have placed the employer in a more serious dilemma. The fine line between a foreman qua managerial person and a "lead hand" qua employee is often very difficult to discern. Had the employer intervened as aforesaid and later proven to have been incorrect with respect to Mr. Gallegos' status then, of course, a strong case for a committal of the unfair labour practice infraction under the Act may very well be established. Moreover, even if the employer proved to be correct with respect to the status issue the Board is of the view that any corporate decision in the operation of its business that materially affected employees to its prejudice would expose the employer (especially having regard to the reverse onus provisions under section 79(4a)) to allegations of wrongful and unlawful interference. In other words, the Legislation contemplates save for very narrow and restrictive circumstances (i.e. section 56) employer detachment and isolation from an applicant trade union's efforts to organize. In our view, the only posture that an employer may realistically assume in the face of the dilemma delineated is to remain aloof and neutral. However, it does not follow from the foregoing that an employer in all instances may allow with impunity his managerial personnel to interfere in a union's organizational campaign. (See, *The Whitney Maintenance Ltd.* case [1973] OLRB Rep. January 26 at p.27).

12. The Board therefore is of the view that the applicant was duty bound to purge its campaign of the taint created by Mr. Gallegos' participation. This objective could have been achieved by calling upon Mr. Gallegos or the affected employees to adduce evidence with respect to the nature of their relationship notwithstanding his duties and responsibilities as foreman. In the last analysis the Board must be satisfied for purposes of making a finding under section 7 of the Act that the applicant trade union's efforts were free of management interference in that the true wishes of employees are reflected in the documentary evidence of membership. The Board's policy considerations reflect an overriding concern that the integrity of the bargaining relationship be established as condition precedent of granting a certificate extending a trade union the privileges of bargaining on behalf of employees. The only evidence before this Board was the information contained in the Labour Relations Officer's Report demonstrating that the majority of employees in the bargaining unit would view Mr. Gallegos as their "boss". The evidence is also uncontradicted that Mr. Gallegos assumed a key role in the applicant's efforts in order to persuade those employees to sign membership cards. As a result we cannot conclude that those employees' true wishes were reflected in the membership cards filed by the applicant in support of its efforts to acquire bargaining rights on their behalf. (See: *The McCarthy Milling Company Ltd.* case 54 CLLC ¶17,070 at p.1477 and *The Swift Canadian Co. Limited* case 54 CLLC 17071 at 1477).

13. Before leaving this case the Board wishes to make this remark with respect to the applicant's activities. In our view Mr. Grasso acted properly and in good faith in the manner he conducted himself prior to the onset of the campaign. He made a judgment based on information available to him at the time of his interview with Mr. Gallegos. The decision to permit Mr. Gallegos to participate in the campaign (and exploit to the applicant's advantage his leadership qualities) was to say the least unfortunate. Nevertheless, the Board notes

that Mr. Grasso at all material times was aware that Mr. Gallegos was employed as "a group leader" in the respondent's welding department. In resolving to authorize a person known to exercise to some extent supervisory responsibilities over other employees in the bargaining unit sought to be organized out to be deemed to be at an applicant trade union's peril.

14. The application is therefore dismissed.
-

0620-76-U Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 141, (Applicant), v. **Harry Woods Transport Limited**, (Respondent).

Lock-Out – Whether terminations by a company in difficult economic circumstances constituted a lock-out when they followed a refusal by the union to renegotiate terms of collective agreement – Effect of employer still hoping to continue in business.

BEFORE: Donald D. Carter, Chairman, and Board Members P.J. O’Keeffe and J.E.C. Robinson, Q.C.

APPEARANCES: *J. Melnitzer, J. McAfferty, Clayton Smith and Ronald Hoffman for the applicant; Donald J. McKillop, Q.C. and Jack Woods for the respondent.*

DECISION OF DONALD D. CARTER, CHAIRMAN, AND BOARD MEMBER P. J. O’KEEFFE: July 15, 1976

1. This is an application made under section 83 of the *Labour Relations Act* alleging that the respondent has engaged in an unlawful lock-out. The applicant seeks a declaration that the conduct of the respondent constitutes an unlawful lock-out, and a direction requiring the respondent to reinstate those members of the bargaining unit affected by the lock-out.

2. The evidence in this case has given us little difficulty. The two witnesses for the applicant and the one witness for the respondent all gave their evidence in a straightforward and credible fashion. Of real concern, however, is the very bad collective bargaining relationship between the applicant and respondent that is revealed by this evidence. It is clear to us that the unfortunate events that occurred could have been avoided if mutual problems had been approached in a more constructive fashion, a fault for which the blame must be shared by both the applicant and the respondent.

3. The respondent carries on business as a common carrier in the trucking industry. It is a family business that has been operating for forty-five years. The respondent has had a collective bargaining relationship with the Teamsters’ Union since the late 1950s. At the present time the applicant and respondent are parties to a collective agreement, dated July 28, 1975.

4. This collective agreement was entered into only reluctantly by the respondent. During the negotiations for this agreement, the respondent had taken the position that its very vulnerable competitive position should be recognized by the applicant and that the appropriate contract was one designed for C carriers, rather than one designed for A carriers. Faced with the possibility of legal strike action, however, the respondent did accede to an A contract, although indicating that it might not be financially possible for it to see the contract through to the end.

5. Following the signing of the contract, the already strained relations between the applicant and respondent became progressively worse. The first sign of this deterioration occurred when the respondent refused to pay the cost-of-living adjustment for November, as required by the collective agreement. The respondent did not answer the applicant's request to meet on this matter and, subsequently, refused to have anything to do with the arbitration dealing with the same matter until after being served with an order of the Supreme Court of Ontario, dated May 20, 1976.

6. At the same time that it was ignoring the arbitration proceedings, the respondent was attempting to renegotiate the collective agreement. On April 10th, the respondent convened a meeting with its employees, apparently to explain its financial plight. Subsequently, on April 24th, the respondent and applicant met at the Teamsters' Hall to discuss the situation. The respondent took the position that seven points had to be agreed upon if it was to remain in operation. It is clear that agreement on at least some of these points would have resulted in an alteration of the existing collective agreement. The respondent indicated to the applicant that it had three days in which to decide whether to accept the seven points.

7. The reply, which came some time after the three-day deadline, was "no". Shortly thereafter on May 17, 1976, termination notices were sent to twelve employees. The notices all contained the same wording, except for the name of the employee. The text of the notice was as follows: "We are sorry to find it necessary to inform you that since your union is pursuing legal action against the Company, it is refusing to negotiate, and the Company is unable to operate at a profit, your services will not be required as of June 15, 1976." A further explanation of these termination notices was set out in an open letter posted on the bulletin board subsequently. The letter, dated May 19, 1976, stated:

Recently the most drivers received notice that they would be permanently laid off in the near future. This letter is set all the rumours straight.

A few weeks ago, Jack Woods contacted the union and requested the chance to re-negotiate a contract to keep our business in operation, at first they realized the need, but last Sunday they decided against it. I feel the majority of the men are now willing to negotiate to keep their jobs. Once we heard the union was going force us to pay all the conditions of the "A" agreement by court action we realized there was no chance of survival in the very competitive "C" truck load business, therefore the first twelve men received their notices. Monday *all* of our main customers were called and told why we must close our business down. All drivers will lose their jobs not just the first twelve, as some senior drivers believe. The equipment and license will be sold individually.

We are forced to close strictly because of high labour costs. We can no longer get customers to give us increases to cover labour increases, we actually reduced several rates in the last twelve months.

Our major costs such as fuel, depreciation, maintenance, and insurance, are well under control and low by industry standards. Labour costs are now well over 50% of revenue and we are only halfway through the union contract. We realize we cannot get any rate increases we badly need. The spread between your wages and our competition has increased dynamically in the last two years.

Our competition is

Listowell "A" – Laidlaw "C" \$5.83/hr
 (truckloads) – Livingston "C" \$5.50/hr
 Toronto – Trojan "C" Broker
 (Hamilton) – Highland "C" Broker
 \$5.50/hr – Private carriage and leasing

Hutton Transport is really not in direct competition with us. They are subsidized by good cement rates and they are owned by their only real customer. Hutton is losing money on most non cement loads, we know their rates and costs.

Any London based "C" carrier would love to have our freight at our rates. Laidlaw has kept wage rates down by outsmarting his drivers. They are now at \$5.59 with less than 25% of the benefits you now get.

We must have a 5% net profit to allow us to supply trucks and freight to you. If we don't make a profit we won't supply you a job.

All other Teamsters locals have "C" carriers agreements to keep these other carriers in business. Such an agreement would have kept Spicknell teamsters on the job. All teamster "C" agreements are higher than Laidlaw wages, example Harry Woods Transport Burlington rates.

You soon will be forced to join Spicknell drivers in getting driving jobs at about \$5.00 hr, or factory work at less. Teamster carriers are not hiring and you know the battle to get steady work as a junior man. City Cartage averages \$5.- hr, even teamsters.

If you have read this far you will understand our need to renegotiate with you. The teamsters union doesn't care if we close, if you do not care!

Please do not leave without knowing the honest actual reasons for our shut down.

We will base our future mainly on our successful *competitive* leasing Company.

Yours truly
Richard Woods

8. During all of the above events, the respondent was not receiving legal advice from labour relations counsel. Upon receiving the order of the Supreme Court, dated May 20, 1976, the respondent did seek the advice of counsel. Through the efforts of counsel, a meeting between the applicant and the respondent was arranged for June 2nd, with a view to working out their problems through negotiation. The meeting adjourned shortly after it was convened, apparently because of the respondent's objection to an application that the applicant had filed with this Board. On that same day, termination notices were sent to fourteen employees. The notices were worded in the following manner: "Due to economic circumstances, the Company is unable to continue with its operation. Your services will no longer be required after July 31, 1976." The result was that all but one of the drivers covered by the collective agreement had now received termination notices.

9. The evidence indicates that the respondent has reduced its trailer fleet from sixty-seven to twenty-nine during the past year, a very large part of this reduction occurring during the last week. The tractor fleet has not been sold yet, but it is apparently being prepared for sale. Under cross-examination, the respondent's vice-president and general manager admitted that the terminated employees had been refused references, although it was also admitted that they were among the most capable employees available in the area. Moreover, this witness, who was also a shareholder in the family business, indicated that there was some hope that its common carrier business in London might still be carried on, even though it might be on a reduced scale.

10. Section 1(i) defines a lock-out in the following terms:

- (i) "lock-out" includes the closing of a place of employment, a suspension of work or a refusal by an employer to continue to employ a number of his employees, with a view to compel or induce his employees, or to aid another employee to compel or induce his employees, to refrain from exercising any rights or privileges under this Act or to agree to provisions or changes in provisions respecting terms or conditions of employment or the rights, privileges or duties of the employer, an employers' organization, the trade union, or the employees;

In essence the lock-out is a resort to economic sanctions by the employer. These sanctions include closing the place of employment, suspending work, or a refusal to employ. It should be pointed out, however, that a closing down of a business without more, does not constitute a lock-out. Although the resulting economic consequences may parallel those that exist in the lock-out situations, there is absent any purpose to compel or induce employees to refrain from exercising any rights or privileges under the Act or to agree to changes in provisions respecting terms or conditions of employment. The Board, therefore, must look beyond economic consequences and determine the motive behind the actions that have led to these consequences.

11. In this case it is clear that there has been a refusal by the employer to continue to employ a number of employees. Twenty-six employees in the bargaining unit represented by the applicant have received notices of termination. In the case of the first twelve we can only infer that the termination notices were motivated by the respondent's desire to renegotiate the collective agreement. The evidence, and especially the statements contained in the termination notice and the open letter that followed, all indicated that the respondent had not made an irrevocable decision to close the business, but was merely attempting to apply pressure through the termination of individual employees in order to obtain an alteration of the existing collective agreement through negotiation. We can understand the respondent's desire to preserve what is a family business, but the methods used cannot be condoned. Just as employees are not allowed to strike during the term of a collective agreement, employers must always refrain from resorting to economic sanctions during that period of legislated industrial peace. The prohibition of economic sanctions during the terms of a collective agreement does not prevent negotiations from occurring during that period. What it does mean, however, is that any negotiations that do occur cannot be supported by a threat of economic sanctions or a resort to economic sanctions.

12. The termination of the other fourteen employees after the June 2nd meeting is more problematic. The question is whether, at that time, the respondent had made an irrevocable decision to close the business, or whether it was still using the termination notices as a lever to renegotiate the contract. Given the respondent's earlier resort to an illegal lock-out, its refusal to give any of its employees references, and its desire to preserve the business (a desire that existed even at the time of the hearing), we find, on the balance of probabilities, that these actions also constituted an unlawful lock-out. The remaining question is whether the lock-out continued up until the date of the hearing in this matter. Certainly the sale of the trailers during the past week is evidence of an irrevocable decision to close the business. We are not convinced, however, given the respondent's desire to preserve the business, that the respondent had reached the point of no return at this time.

13. We, therefore, declare that the respondent has authorized an unlawful lock-out, and that this unlawful lock-out is still continuing.

14. We direct the respondent to cease and desist from continuing such unlawful conduct. More specifically, we direct the respondent to revoke the notices of termination, dated May 17th and June 2nd, 1976.

DECISION OF BOARD MEMBER J.E.C. ROBINSON, Q.C.:

I dissent in part from the decision of the majority. While I am in agreement that there may well have been an unlawful lock-out by the respondent on or about May 17th, 1976, I am of the opinion that the evidence supports my finding that any lock-out ceased to be unlawful on or about June 2nd, 1976 at which time the respondent was actively engaged in the cut-back of its operation.

0363-76-U Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 141, (Applicant), v. **Livingston Transportation Limited**, (Respondent).

Lock-Out – Whether lock-out or closing down of operations for financial reasons.

BEFORE: Ian C.A. Springate, Vice-Chariman, and Board Members P.J. O’Keeffe and N. Satterfield.

APPEARANCES: *J. Melnitzer, Jack McAfferty and W. Graham for the applicant; T.F. Storie and Wm. Johnston for the respondent.*

DECISION OF THE BOARD: July 21, 1976

1. This is an application for relief under Section 83 of The Labour Relations Act. The applicant is seeking a declaration that the respondent called or authorized an unlawful lock-out, as well as an order that the employees affected be reinstated by the respondent.
2. The respondent is a fairly large cartage firm which operates out of a number of terminals in Southern Ontario. These proceedings relate primarily to its terminal in the City of London.
3. Prior to 1974 the respondent did not have a terminal in London. However, during that year the corporate parent of the respondent purchased all of the shares of Spicknell Transport, with certain specific exceptions, were represented for collective bargaining purposes by the applicant union. At the same time, however, comparable employees at the various Livingston Transportation terminals were represented by the International Woodworkers of America. On or about January 8, 1976, following the aforementioned amalgamation, representatives of the applicant and the respondent met to consider what effect it might have on the applicant’s bargaining rights. This meeting, and others which followed it, resulted in an agreement being signed by the parties on March 15, 1976. This agreement provided that the name of the respondent was to be substituted for that of Spicknell Transport on a subsisting collective agreement with the applicant, but that the applicant’s bargaining rights were to relate only to the respondent’s operations at its London terminal.
4. Prior to its amalgamation with Spicknell Transport the respondent had a number of customers in London which it serviced out of its other terminals, and in particular out of its terminal in St. Thomas. This servicing of London customers from outside terminals continued to some extent even after the amalgamation in January of 1976. Further, subsequent to the sale of Spicknell Transport to the Livingston interests, some of the London area work formerly done by Spicknell Transport began to be performed out of other terminals of the respondent and again, in particular out of its St. Thomas terminal.
5. On or about January 8, 1976, shortly after the operations of Spicknell Transport were formally amalgamated with those of the respondent, the respondent indicated to the applicant that it was considering the closing of its London terminal for financial reasons, as well as the absorbing of some of the London-based drivers into its operations at its other terminals. On or about April 15th the respondent again raised the possibility of closing the London terminal. On April 20, 1976, the employees of the respondent’s London terminal were informed that the terminal would be closing effective April 23rd. All but one of the

employees working at the terminal had their employment terminated as of that date. At the hearing counsel for the respondent indicated that the work being performed by the one remaining employee would likely cease by the end of June, 1976.

6. Mr. William Johnston, the vice-President and General Manager of the respondent, testified that some 80 per cent of the work formerly handled by the respondent through its London terminal was no longer being performed by the respondent. The remaining 20 per cent, he said was now being performed from terminals outside of London and in particular from its terminal in St. Thomas. With respect to this 20 per cent, he stated that although most of the customers involved had originally been customers of Spicknell Transport, from the time of the purchase of Spicknell they had been served in part from the respondent's terminals outside of London. He also indicated that the respondent was continuing to service from outside of London its customers which had never been customers of Spicknell Transport.

7. As stated above, when the respondent indicated to the applicant that it was considering closing the London terminal it also raised the possibility that some of the London-based employees might be absorbed into its operations at the other terminals. However, it was made clear that should this occur the employees affected would be paid the wage rates specified for in the collective agreement between the respondent and the International Woodworkers of America. These wages at the present time are in excess of one dollar per hour lower than the wages which were being paid to employees under the collective agreement between the applicant and the respondent. From the time that it was first informed of the possibility of a closure, the applicant strongly opposed the closing of the London terminal as well as having employees paid lower wages to work out of other terminals. As of the date of the hearing in this matter none of the London-based drivers had, in fact, been offered employment at the respondent's other terminals, although a dispatcher was taken on at the St. Thomas terminal as a driver. Mr. Johnston stated in his testimony that the proposal to re-locate the London drivers had been conditional upon there being a need for their services at the other terminals, and that the increased work load at the other terminals had not been sufficient to cause them to require the extra manpower.

8. At the hearing counsel for the respondent submitted in evidence certain financial data relating to the London terminal. This data revealed a sharp decline in the terminal's operating profit (exclusive of the portion of head office costs charged against the terminal as well as any provision for taxes) commencing in August of 1975, as well as actual operating losses in every month of its operation from October of 1975 on, with the one exception of a modest operating profit in December of 1975. It would appear from the data filed that one reason for the losses was a rise in costs as a proportion of revenue. However, from January 1976 until the closing of the terminal in April the data also reveals a substantial decline in the revenue of the London terminal. Counsel for the applicant did not challenge the financial data put forward by the respondent. However, he did contend quite vigorously that the financial situation of the London terminal was the result of a "draining off" of much of the more profitable work to terminals outside of London.

9. Section 1(1)(i) of The Labour Relations Act defines a lock-out as follows:

"'lock-out' includes the closing of a place of employment, a suspension of work or a refusal by an employer to continue to employ a number of

his employees, with a view to compel or induce his employees, or to aid another employer to compel or induce his employees, to refrain from exercising any rights or privileges under this Act or to agree to provisions or changes in provisions respecting terms or conditions of employment or the rights, privileges or duties of the employer, an employers' organization, the trade union, or the employees;"

From this definition it follows that a lock-out comprises two elements. The first is a closing of a place of work or a refusal to continue to employ a number of employees. The second element, which qualifies the first, requires that the foregoing action of an employer be done "with a view to compel or induce his employees, or to aid another employer to compel or induce his employees, to refrain from exercising any rights or privileges under this Act or to agree to provisions or changes in provisions respecting terms or conditions of employment..." (See: *S. McNally & Sons Limited* [1971] OLRB Rep. July 430). There is no doubt in this case that the first element is present. The issue remains, however, as to whether or not the second element is also present.

10. The position of the respondent with respect to the motive behind the shutting down of its London operation was simply that it had done so for financial reasons and not with a view to compel or induce anyone to do anything. Counsel for the respondent indeed contended that in the circumstances of this case, the actions of the respondent had come within the scope of Section 68 of the Act. Section 68 states that:

"Nothing in this Act prohibits any suspension or discontinuance for cause of an employer's operations or the quitting of employment for cause if the suspension, discontinuance or quitting does not constitute a lock-out or strike. R.S.O. 1970, c. 232, s.68."

11. Counsel for the applicant contended that the closure of its London terminal by the respondent was not the straight forward closure for financial reasons as it might at first appear. In particular, he noted that a not insignificant portion of the work previously handled out of the London terminal was still being performed, except that it was now being done by other employees working out of other terminals under a different collective agreement and at a lower rate of pay. He contended that where there is work that can be done under a collective agreement and the employer affects a closure of his premises but at the same time continues to operate in such a manner that some of the same work is still being done, then the employer is in fact compelling his employees by locking them out to refrain from exercising their right to work at the rate of pay set out in the collective agreement. He also stated that since in this case a significant motive behind the employer's actions was to compel employees to cease exercising their right to work at the wage level specified for in their collective agreement, and since this motive was unlawful, then the closing down of the terminal and the refusal to continue to employ those persons who had worked there was also unlawful even though other considerations may also have been involved.

12. There is no doubt but that the closure by the respondent of its London terminal has had severe repercussions on the persons formerly employed there, a number of whom had been long service employees of Spicknell Transport. However, with respect to the application before it the Board is limited to the issue of whether or not the closing of the terminal and the resultant discharges constituted a lock-out within the meaning of Section 1(1)(i) of

the Act. In this regard even though the respondent has transferred part of its London business to other terminals, the fact remains that the London closing was not accompanied by any intimation, either direct or inferential, of a possibility of continuing the operation conditional upon the agreement of the employees to cease exercising certain of their rights or privileges under the Act or to their agreeing to any changes in provisions respecting their conditions of employment. This being the case it cannot be said that the closure of the terminal came within the definition of "lock-out" in Section 1(1)(i). (In this regard see *Amalgamated Electric Corporation Limited*, [1963] OLRB Rep. Oct. 403 and *Fleetwood Corporation*, [1974] OLRB Rep. June 385).

13. Although a number of cases were cited to the Board by counsel for both parties, counsel for the applicant placed particular stress on the decision of the British Columbia Labour Relations Board in the *British Columbia Distillery Company Limited* case [1975] 2 Canadian LRBR 183, and it would appear appropriate to deal with it specifically. In that case the majority of the panel hearing the matter decided that the closure of part of its business by an employer, following the service upon it by a union of a notice to bargain for the renewal of a collective agreement, constituted a lock-out within the meaning of Section 1(1) of the British Columbia Labour Code. However, in reaching that decision the majority concluded after a careful review of the particular bargaining relationship involved as well as the timing of the shutdown that a significant motivation behind the employer's decision was to compel its employees through the union to agree to certain bargaining proposals. The evidence before this Board, however, does not lead to the same factual conclusion. In particular here there is no indication that the respondent by closing down its London terminal was seeking to get its employees to agree to any bargaining proposals.

14. It should be noted that in these proceedings the Board was called upon only to deal with the issue of whether or not the respondent called or authorized an unlawful lock-out. It may well be that the applicant or the employees have available to them other remedies either under the collective agreement or otherwise by law. However, that is not something which the Board was called upon to determine.

15. This application is dismissed.

0382-76-U Jay Sussman, (Complainant), v. United Steelworkers of America, Local 7135, (Respondent).

Duty of Fair Representation – S60 – Whether trade union officials must actively seek out grievor once aware of grievance to ensure grievor is satisfied with its resolution – Whether grievor's activities to encourage employees to take stronger action than recommended by union in response to pending layoff motivated union violation of duty of fair representation.

BEFORE: Kevin M. Burkett, Vice-Chairman and Board Members J.D. Bell and P.J. O'Keeffe.

APPEARANCES: *Michelle Swenarchuk and Jay Sussman for the complainant; Robert Rae and Lennard Dimitry for the respondent.*

DECISION OF THE BOARD: July 30, 1976

1. This is a complaint filed under section 79 of the Act in which the complainant alleges that he has been dealt with by the respondent union contrary to section 60 of The Labour Relations Act.

2. This complaint arose out of the lay-off of Mr. J. Sussman from the employ of the National Steel Car Corporation Limited. Mr. Sussman who commenced employment with National Steel Car on October 21, 1975 was notified by his foreman Mr. Wm. Zadrillic on Wednesday, March 31, 1976 that he would be laid off effective Friday, April 2, 1976. Mr. Sussman and one other employee were laid-off from the forge at this time. The company had announced in mid-January that because of a lag in orders it would be reducing its work force by some 1,200 employees. In response to these impending lay-offs, Mr. Sussman and a number of other persons, some of whom were fellow employees at the National Steel Car, initiated a campaign against both the impending lay-offs and the working conditions at the respondent's plant. Mr. Sussman and the others were especially critical of the union's failure to act on these matters. This campaign included the printing and circulating of a series of inflammatory newsletters which were distributed at the plant gates, the circulation of a petition addressed to the executive of Local 7135 which urged a ban on all overtime, increased S.U.B. contributions and the establishment of a committee to fight all lay-offs, and finally the setting up of a picket line at the United Steelworkers Hall on June 2, 1976. Further, Mr. Sussman was interviewed in the "Workers Action", the monthly paper of the international socialists. This interview which was sharply critical of the union for its failure to "take a fighting position" with regard to the poor working conditions and the impending lay-offs appeared in the edition of the "Workers Action" which was sold at the plant gate the day before Mr. Sussman received notice of his lay-off. Mr. Sussman alleges that the respondent trade union refused to grieve his lay-off because of the aforementioned activities and discriminated against him because of these activities.

3. Mr. Sussman was working in the Forge (Department 200) as a Labourer-Helper on the 18,000 lb. hammer at the time of his lay-off and had done so, with the exception of a 3-month period during which the 18,000 lb. hammer was shut down, since the inception of his employment with the company on October 21, 1975. During this 3-month period Mr. Sussman spent three days as a furnaceman and then was transferred to another department to work as a helper before being returned to the forge. Mr. Sussman had the third least seniority in the forge department at the time of his lay-off. He exceeded by two days a Mr. G. Coutu who was employed as a furnaceman at the time of the lay-off and he was also more senior to a Mr. W. Ford who was at the relevant time employed as a helper in the forge. Messrs. Ford and Sussman earned \$5.22 per hour as helpers whereas Mr. Coutu earned \$5.28 per hour as a furnaceman.

4. The evidence establishes that Mr. H. Plessel, the shop steward assigned to the forge, was told by another employee that Jay Sussman wished to grieve his lay-off. Mr. Plessel left his work station and sought out Mr. Wm. Zadrillic, the department foreman who had given Mr. Sussman the notice of lay-off. Mr. Plessel testified that he was aware of the fact that Mr. Coutu who had less seniority than Mr. Sussman had not been laid-off. Mr. Zadrillic explained the retention of Mr. Coutu as a furnaceman within the forge department to the satisfaction of Mr. Plessel who then approached Mr. Sussman, discussed the matter with him and advised him that he did not have a grievance under the collective agreement. The

evidence is unclear as to whether Mr. Sussman insisted at this point that a grievance be filed. Nevertheless, Mr. Plessel, who testified that this was the first grievance he had dealt with, told Mr. Sussman that he would bring the matter up with Ralph Milon the union's secretary/treasurer and have Mr. Milon speak to him. Mr. Plessel testified that he had read Mr. Sussman's interview in the "Workers Action" and had taken it as a personal insult because he was Mr. Sussman's steward. He was particularly upset because Mr. Sussman had never approached him with his complaints prior to publicizing them in the "Workers Action," and admitted that he engaged in a heated discussion with Mr. Sussman at the time he advised him he did not have a grievance. Mr. Plessel admitted that he was not overly sympathetic to Mr. Sussman who had been critical of the union and was in the face of his lay-off asking for "help" from the union. He was, however, satisfied with the explanation for the lay-off given him by Mr. Zadrillic, the foreman.

5. Mr. Plessel contacted Mr. Milon, the financial secretary of the union who by his account had been involved with over 300 grievances in his eight years with the union and explained to him the basis of Mr. Sussman's complaint. Mr. Milon agreed with Mr. Plessel that there was no merit to Mr. Sussman's grievance. Mr. Milon and Mr. Plessel went to the forge area in search of Mr. Sussman that afternoon (Thursday, April 1) but were unable to locate Mr. Sussman. Neither Mr. Plessel nor Mr. Milon made any further attempt to contact Mr. Sussman and did not pursue the matter further. Mr. Sussman, likewise, made no further effort to contact either Mr. Plessel or Mr. Milon with respect to his grievance. Mr. Milon testified that an employee is expected to show an interest in his grievance, and that "the union does not run after people, they come to us because we have an office and it is easier for them to contact us." Mr. Milon testified that he thought the matter had been settled to the satisfaction of Mr. Sussman.

6. The evidence further establishes that Mr. Sussman visited the United Steelworkers office (as distinct from the local union office) on Friday April 2, 1976 late in the afternoon but could not locate anyone in authority. He returned on Monday, April 5, 1976 and talked with John Morgan, the international representative, who services the National Steel Car local. Mr. Morgan informed Mr. Sussman that it was not in his capacity to file a grievance. Mr. Morgan testified that he advised Mr. Sussman to contact the shop steward. Mr. Sussman denies that he was so instructed.

7. A regular monthly meeting of the local union took place on Tuesday, April 6, 1976. That meeting was chaired by Mr. Milon. Mr. Morgan was present as the recording secretary. It was at this meeting that Mr. Sussman attempted to place the petition referred to in paragraph 2 of this decision before the executive. The meeting was a tumultuous one during which Mr. Sussman was ruled out of order by Mr. Milon and denied an opportunity to formally present the petition to the local executive. Mr. Sussman made no attempt at this meeting to discuss his personal grievance with Mr. Milon nor did he at any other time make contact with Mr. Milon in respect of his lay-off.

8. Section 60 of the Labour Relations Act states:

"A trade union or council of trade unions, so long as it continues to be entitled to represent employees in a bargaining unit, shall not act in a manner that is arbitrary, discriminatory or in bad faith in the representation of any of the employees in the unit, whether or not members of the trade union or of any constituent union of the council of trade unions, as the case may be."

9. The terms describing the conduct proscribed by Section 60 of the Act have been elucidated in the *Walter Princedomu* case [1975] OLRB Rep. May 444:

“24. Bad faith and discrimination are not being alleged in the facts at hand but their meaning is well worth a brief examination. The sequestrial use of the words may assist in elaborating the total meaning of the duty and at the very least the particular application of each word demonstrates why this case is difficult. The prohibition against bad faith and discrimination describe conduct in a subjective sense – that an employee ought not to be the victim of the ill-will or hostility of trade union officials or of a majority of the members of the trade union. (See Adell, *The Duty of Fair Representation – Effective Protection for Individual Rights in Collective Agreements?* (1974) 25 Indus. Rel. 602, 611.) Bad faith and discrimination constitute the outer limits of majoritarianism and official action, preventing a trade union from singling out certain individuals for unfair treatment. This aspect of the duty is particularly important in discouraging discrimination on the basis of race, creed, colour, sex, etc., preventing internal trade union politics from erupting into forms of invidious conduct; and in prohibiting extreme forms of interpersonal breakdowns within a trade union. It is basic to a system based upon an exclusive bargaining agent. But as important as this subjective ill-will aspect of the duty is and as difficult as it may be to apply in some circumstances the most vexing and difficult application of the duty today is in giving meaning to the word “arbitrary”.

25. In using the word arbitrary both the United States Supreme Court and the Legislature of this Province must have envisaged the duty constituting more than the simple castigation of subjective ill-will in that any other interpretation would render the use of this word superfluous. Thus, a well known rule of both statutory and contractual construction militates against the respondent's particular submissions in this regard. But where does this path lead? Some insight is gained from the *Vaca* case wherein Mr. Justice White juxtaposed the word arbitrary with the word “perfunctory” and observed that a trade union, “in a non arbitrary manner [must] make decisions as to the merits of particular grievances.” It could be said that this description of the duty requires the exclusive bargaining agent to put “its mind” to the merits of a grievance and attempt to engage in a process of rational decision-making that cannot be branded as implausible or capricious.

26. This approach gives the word arbitrary some independent meaning beyond subjective ill-will, but, at the same time, it lacks any precise parameters and thus is extremely difficult to apply. Moreover, attempts at a more precise adumbration have to reconcile the apparent consensus that it is necessary to distinguish arbitrariness (whatever it means) from mere errors in judgment, mistakes, negligence and unbecoming laxness. (See, for example, *The Steel Company of Canada, Limited* [1974] OLRB M.R. 392; *Rutherford's Dairy Limited* [1972] OLRB M.R. 240; *Steinberg's Limited (Miracle Food Mart)* [1972] OLRB M.R. 423. See

also Flynn and Higgins, *Fair Representation: A Survey of the Contemporary Framework and a Proposed Change in the Duty Owed to the Employee* (1974) 8 Suffolk University, Rev. 1096, 1143; Clark, *The Duty of Fair Representation: A Theoretical Structure* (1973), 51 Tex. L. Rev. 1199, 1173). The rationale of this consensus was convassed by the Board in *Ford Motor Company of Canada Limited* [1973] OLRB M.R. 519 at para. 40:

“40. In deciding whether a union has violated the Act the standards to be applied are important. We recognize that trade union affairs are conducted for the most part by laymen. In some situations there are experienced full time officials of a trade union who conduct the union affairs; in other situations, the union affairs are conducted by employees in their spare time, while in yet other situations employees may be given a limited amount of paid time by their employers to engage in trade union matters. This Board does not decide cases on the basis of whether a mistake may have been made or whether there was negligence, nor is the standard based on what this Board might have done in a particular situation after having the leisure and time to reflect upon the merits. Rather, the standard must consider the persons who are performing the collective bargaining functions, the norms of the industrial community and the measures and solutions that have gained acceptance within that community; see *Fisher v. Pemberton et al*, 8 D.L.R. (3d) at 521 at p. 546.”

The Board in the *Princedomu* case (supra) went on to say in respect of the term arbitrary,

“...It may be difficult to elaborate the precise meaning of arbitrary representation in advance but, as noted above, the very use of the word suggests that some regulation of the quality of decision making was intended. Accordingly at least flagrant errors in processing grievances – errors consistent with a “not caring” attitude – must be inconsistent with the duty of fair representation. An approach to a grievance may be wrong or a provision inadvertently overlooked and section 60 has no application. The duty is not designed to remedy these kinds of errors. But when the importance of the grievance is taken into account and the experience and identity of the decision maker ascertained the Board may decide that a course of conduct is so implausible, so summary or so reckless to be unworthy of protection...”

10. Before dealing with merits of the complaint the Board wishes to set out the relevant section of the subsisting collective agreement under which Mr. Sussman was attempting to grieve. Mr. Sussman had completed less than 24 months of service with the company at the time of his lay-off and was therefore, under the terms of article 7.03 of the agreement restricted to departmental seniority. Article 7.03 states:

“Departmental Seniority

An employee who has completed his probationary period but has less than twenty-four (24) months of service shall be placed on his departmental seniority list in line with his service with the company.”

Article 7.08 provides that:

“Wherever used in this agreement, the word “qualified” or the like, shall mean presently possessed of the accomplishments which enable the person to perform the work required in the department in accordance with the Company’s quality and production standards, so that the person performs such work after being given general information concerning it – but does not require a training period.

Whenever the question of whether an employee is qualified arises, it shall be the employee’s responsibility to satisfy the Company that he is qualified to perform the work of the classification (i.e. occupation) and he must do so at a time prior to his assertion thereof in the face of a lay-off, recall or transfer.”

and Article 7.09 (1)(b) provides,

“7.09 General Provisions Respecting Lay-Off

- (1) When it is necessary to decrease the number of employees in a department, such reduction will be made as follows:
 - (b) If further lay-offs are necessary in the department, departmental seniority employees will be laid off in inverse order of seniority provided the remaining employees are qualified.”

11. Mr. Sussman who had less than 24 months seniority at the time of his lay-off was clearly restricted in the application of his seniority rights to the forge (Department 200). In addition his seniority rights were further dependant upon qualification. The evidence establishes that there were two persons with less departmental seniority than Mr. Sussman, who was employed as a helper at the time of his lay-off: Mr. W. Ford another helper and Mr. Coutu a furnaceman. As noted earlier the furnaceman classification enjoys a higher rate (\$5.28 vs \$5.22) than that of the helper classification. The evidence establishes that Mr. Ford was laid-off at the same time as Mr. Sussman but that Mr. Coutu was retained by the company. Mr. Zadrilic, the departmental foreman, explained to Mr. Plessel the shop steward that Mr. Coutu was retained because he was performing the furnaceman’s job, a higher rated and more skilled position than that occupied by Mr. Sussman and that by virtue of articles 7.08 and 7.09 (1)(b) the company was within its rights to retain Mr. Coutu in preference to Mr. Sussman. Mr. Sussman admitted in cross-examination that he would have required a two or three day training period in order to perform the furnaceman’s job. Mr. Plessel was satisfied with this explanation as was Mr. Milon when the explanation was recounted to him. Without making a finding as to the merits of Mr. Sussman’s claim the Board is satisfied, having regard to the fact situation and to the relevant terms of the collective agreement that the conclusion of both Mr. Plessel and Mr. Milon that the complaint was without merit, was, in the circumstances, a reasonable one. Their explanation was both plausible and realistic. (See *Canadian Trailmobile Ltd. and U.A.W.* 10 LAC (2d) 92). The Board is satisfied that both Mr. Plessel and Mr. Milon put their minds to the merits of Mr. Sussman’s complaint. The Board in addressing itself to the subsequent conduct of the union must judge the union in the light of the conclusion reached by both Mr. Plessel and Mr. Milon that the grievance was without merit.

12. The Board is satisfied that the union in failing to pursue Mr. Sussman's grievance did not violate the duty imposed upon it under section 60 of The Labour Relations Act. Mr. Plessel who was handling his first grievance openly admitted that he took umbrage with Mr. Sussman's criticism of the union. The evidence, however, does not cause the Board to find that Mr. Plessel responded to Mr. Sussman's complaint in a manner proscribed by section 60 of the Act. He put his mind to Mr. Sussman's complaint, advised Mr. Sussman of the inadequacy of his claim and, because of his inexperience, undertook to put Mr. Sussman in contact with Mr. Milon. The Board has found that Mr. Plessel's evaluation of the grievance was plausible and realistic. Mr. Plessel advised Mr. Milon of the complaint and joined Mr. Milon in the unsuccessful search for Mr. Sussman. Mr. Plessel can be criticised for not making a further effort to put Mr. Sussman in contact with Mr. Milon. The Board, however, must not lose sight of the fact that Mr. Plessel was handling his first grievance. The conduct of a union official must be judged in relation to his experience and expertise. (See *Rutherfords Dairy Limited* case [1972] OLRB Rep. March 240 and *Ford Motor Co.* case [1973] OLRB Rep. 519). Mr. Plessel, an inexperienced union official, apprised the secretary/treasurer of the local of Mr. Sussman's complaint and although his failure to further pursue Mr. Sussman can perhaps be termed negligent it cannot be branded as arbitrary, discriminatory or in bad faith. The matter need not necessarily have dissipated upon the failure of Mr. Plessel and Mr. Milon to locate Mr. Sussman on Thursday, April 1, 1976 and the Board, therefore, must examine the subsequent conduct of both Mr. Milon and Mr. Morgan the more experienced officials who held responsible positions with the trade union.

13. Mr. Morgan, the international representative servicing the National Steel Car local was approached by Mr. Sussman on Monday, April 1, 1976 with respect to his grievance. Mr. Morgan testified that he had not previously met Mr. Sussman and did not at that time link Mr. Sussman to the newsletters and the petition which have been referred to earlier. He told Mr. Sussman that it was not within his authority to file a grievance and although there is a conflict in the evidence as to whether he directed Mr. Sussman to contact local union officials, the obvious inference to be drawn from Mr. Morgan's comments was that the authority to file the grievance rested with the local. Mr. Morgan's response to Mr. Sussman's representations to him cannot be found to be in violation of section 60 of the Act. He in no way misled Mr. Sussman or prejudiced his ability to pursue his grievance through the proper channels.

14. The pivotal union official in this matter is Mr. Milon, the secretary/treasurer of the local union. He was apprised of Mr. Sussman's complaint and advised that Mr. Plessel had undertaken to put him in contact with Mr. Sussman. Mr. Milon made an attempt on Thursday April 1, 1976 to locate Mr. Sussman but made no further effort in this regard. Mr. Milon testified that he "thought it (the grievance) was settled to his (Mr. Sussman's) satisfaction." Did Mr. Milon violate the Act in not actively pursuing Mr. Sussman and thereby allowing the matter to die? The Board is satisfied that he did not. *Firstly*, as found in paragraph 11 both Mr. Plessel and Mr. Milon put their minds to Mr. Sussman's complaint and came to the reasonable conclusion that it was without merit. Mr. Milon's subsequent conduct must be viewed in light of this fact. *Secondly*, Mr. Milon testified and the Board accepts that it was not his normal practice to chase employees with respect to individual grievances. He testified that he has an office and that it is easier for the employees (of which there are 1,600) to contact him. It should not be forgotten that Mr. Sussman on his part made no effort to contact Mr. Milon although it must be assumed that he knew the location of the local union office and that the matter had to be processed through the local.

Thirdly, the Board has been swayed in its assessment of Mr. Milon's response to Mr. Sussman's grievance by the evidence pertaining to the union meeting of April 6, 1976 which was presided over by Mr. Milon. Mr. Sussman who attended that meeting and was physically present in the same room as Mr. Milon made no effort to discuss with Mr. Milon his desire to grieve. Having regard to the conclusions reached by Mr. Milon with respect to the merits of Mr. Sussman's grievance, to his normal practice of not chasing employees, and to the failure of Mr. Sussman to raise the matter when the two men were present at the April 6, 1976 union meeting or at any subsequent time, the Board is satisfied that Mr. Milon's conclusion that the matter had been settled to Mr. Sussman's satisfaction was both plausible and reasonable. His failure to continue to pursue Mr. Sussman cannot in the circumstances of this case be found to be a violation of the duty of fair representation as that duty has been defined by the Board.

15. The complainant alleges that the trade union exhibited hostility towards him because of his political activities and adduced evidence with respect to a March 30, 1976 conversation between himself and Mr. T. Hawkney the steward for the Steelyard department 220A and also to the conduct of Mr. Milon as Chairman of the April 6, 1976 union meeting. Mr. Sussman was ruled out of order at that meeting when he attempted to formally present the local executive with the petition criticising the local for its failure to actively respond to the lay-off. The Board has reviewed not only Mr. Sussman's evidence in regard to these matters but also that Mr. Hawkney, Mr. Milon, and Mr. Morgan and is satisfied that Mr. Sussman was not dealt with in bad faith or in a manner that was arbitrary or discriminatory. There is no doubt that officials of the union and certain rank and file members were upset and disturbed by the tactics which were being used and suggested by Mr. Sussman. Mr. Sussman made no attempt prior to April 6, 1976 to work through the union and admitted that certain of the proposals contained in the petition circulated in opposition to the lay-offs would, if carried out, have resulted in violations of the law. When Mr. Sussman attempted to place his petition before the membership he ran afoul of the procedural requirements of the local and was declared out of order. Although there was strong opposition to Mr. Sussman the evidence does not support a finding that the trade union singled out Mr. Sussman for unfair treatment or denied him access to the properly constituted channels of internal union discussion.

16. The Board finds that there has been no violation of the Act and dismisses the complaint.

0309-76-U Canadian Chemical Workers Union, (Complainant), v. Custom Converters Printers Limited, (Respondent).

Discharge For Union Activity S79(4a) – Quit or discharge – Effect of management having provoked termination.

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members N. B. Satterfield and R. H. White.

APPEARANCES: *D. Ublansky and W. Adams for the complainant; F. J. Mathews for the respondent.*

DECISION OF FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBER R. H. WHITE: July 26, 1976

1. This is a complaint filed under the provisions of Section 79 of The Labour Relations Act wherein the complainant alleges that the aggrieved person, Kathaleene Morley, has been dealt with by the respondent contrary to the provisions of Sections 56, 58(a) and (c), and 70(2) (a) of the said Act.
2. The evidence as adduced establishes that Mrs. Morley, initially commenced employment with the respondent in February of 1974 until she quit in July of 1975. On September 15, 1975, she was rehired by the respondent in the position of "Quality Control" which required that she check upon the work being turned out by her fellow employees. In addition to performing this task together with a fellow employee Clementine Holzofel, Mr. Morely, in the absence of the operator, would also act as "relief" on any machine located in the respondent's bag department.
3. The testimony of Mrs. Morley is to the effect that she was instrumental in setting up discussions amongst the employees concerning unionization in early April, and that on the evening of April 9, 1975, she called a meeting of the employees in this regard at her home. It was earlier that morning, she testified that Mr. Seniuk, the plant manager, informed her that he was made aware of the meeting that was to be held at her house that evening "right down to the lawyer and the union man being there" Upon denying that she had anything to do with the union in response to his specific inquiry in this area, Mr. Seniuk advised Mrs. Morley that "if the union came in here, it was sure that some of the girls would have to go". She also quoted him that in the event of such an occurrence "I would probably close the plant down".
4. Mrs. Morley further testified that she nevertheless went ahead with the meeting on the evening of April 9, 1975. Upon her return to work the next morning, she was called into Mr. Seniuk's office, where in a direct reference to her union activities, the previous evening, he called her a "liar". It was also on this occasion, she stated, that for the first time Mr. Seniuk drew to her attention an apparent mistake in her quality control duties.
5. On April 12, 1976, the complainant formally filed an application for certification (Board File No. 0066-76-R) on behalf of certain employees of the respondent. The hearing of that matter occurred on April 26 and by decision of the Board dated April 27, 1976, the applicant pursuant to the provisions of Section 6(1) (a), became certified to represent certain

employees in a bargaining unit to be determined. That bargaining unit was subsequently defined in the final decision of the Board in that matter dated May 17, 1976.

6. Mrs. Morley testified that on April 20 or April 21, she had a discussion with Mr. Bill Wilson, the respondent's Printing Supervisor and her former boss, during which time he complained to her as to why she did not first approach him before "heading up the union". When he replied in the affirmative to her question as to whether he was now prepared to discuss the employees' problems, Mrs. Morley arranged a meeting with him in the company of two other employees. During the course of this meeting, Mr. Wilson had taken notes, following which he undertook to present their complaints to the owners. According to Mrs. Morley, Mr. Wilson was advised that if the owners would agree to their conditions then "they would sign the union out". However, nothing further was heard from Mr. Wilson in this respect.

7. Following her attendance at the certification hearing held on April 26, 1976, Mrs. Morley reattended at work later that day. The next day she, together with some other employees, was advised that she would be laid off. She was recalled to work on the bag machine by her immediate superior, Mr. Robert Waelde, the Bag Supervisor, on April 29. It was shortly thereafter she testified, that she and Clementine were called into the respondent's board room for the purposes of having a meeting with Messrs. Waelde and Seniuk. It was at this time that management advised them that it had been decided to do away with their "Quality Control" duties, and that since they were the two senior girls, they were to be reclassified as "Trainers" with respect to the respondent's more recently hired employees. In this respect, they were advised that commencing the week of May 10, and beginning with Mrs. Morley, the "Trainers" would now be required to rotate on the night shift.

8. On the morning of May 7, 1976, Mrs. Morley further testified that following an "incident" with Mr. Don Stagmire, one of the owners, she attended the plant office for the purpose of speaking to her immediate supervisor, Mr. Waelde. However, only Mr. Wilson was present in the office at the time, and she asked him if it was possible for her to remain on steady days on the machine with a corresponded decrease in her wages rather than working the night shift. When he indicated that this was not possible, Mrs. Morley stated that she replied "I guess I'll have to quit then", whereupon she punched her card and left the plant. It was not until the following Thursday, May 13, that she spoke with Mr. Waelde when she attended at the plant to pick up her cheque. It was at that time, she stated, that in order to get her cheque, she signed a document (Exhibit #4) stating that she had "quit of own accord" without agreeing to the contents.

9. During the course of her testimony, Mrs. Morley stated that the officials of the respondent were well aware of her aversion towards working nights. Mr. Waelde's testimony in this regard is that during the meeting held in the board room with Clementine, Mrs. Morley had indicated that she would advise him if she experienced any difficulties in attending the night shift. His evidence is that he heard nothing further from her in this respect. He denied indicating to her that her signing of Exhibit #4 was in any way a pre-condition to Mrs. Morley receiving her cheque.

10. Mr. Waelde further testified that since Mr. Morley's termination, the rotational plan concerning the "Trainers" as initially proposed has now been "scuttled" and that the

respondent has "since hired students and one experienced girl for the night shift." He stated that he had a high regard for Mrs. Morley's capabilities and that if an opening arose in the bag department, he would be prepared to take her back.

11. Having carefully reviewed all of the evidence, the Board is satisfied that had the respondent carried through with its rotational plan concerning the "Trainers" as initially proposed in early April, it would have been in direct violation of the provisions of Section 70(2)(a) of *The Labour Relations Act*. (In this regard see the decisions of the Board in the *Canadian General Electric Company Limited* case [1965] OLRB Rep. December 649 and the *Beaver Electronics Limited* case [1974] OLRB Rep. March 120).

12. Be that as it may, and although we find many contradictions in the evidence with respect to Mrs. Morley's testimony when compared to that elicited from the witnesses called on behalf of the respondent, much of her testimony concerning the anti-union activities exhibited towards her by certain officials of the respondent, and in particular with respect to Mr. Seniuk (who was not called as a witness in these proceedings) stands uncontradicted. We are satisfied that these activities did contribute in some measure to her "upsetting" state of mind on the morning of May 7, 1976. Couple this situation with the fact that she was not subsequently prepared to work nights, as initially scheduled in early April, which as we have found, if implemented, would have constituted a violation of the Act, we have no hesitation in concluding that she was to some degree unlawfully provoked into the precipitous actions she had taken later that morning leading to her departure from the plant. In this regard, we therefore find that the respondent has not discharged the onus cast upon it, pursuant to the provisions of Section 79(4a) of the Act, to show that in its dealings with Mrs. Morley, it has not discriminated against her contrary to the provisions of Section 58 of the said Act.

13. On May 21, 1976, on the advice of her counsel, Mrs. Morley filed with the respondent an Application for Employment (Exhibit #3). In all of the circumstances, the Board finds that Mrs. Morley is not entitled to any monetary compensation, nor are we inclined to direct her immediate reinstatement in employment. Rather, we find that the ends of justice in this matter would be best met if the respondent accepts her application at the time that a vacancy occurs in its bag department. Accordingly, we direct that Mrs. Morley be rehired by the respondent at such time.

DECISION OF BOARD MEMBER N. B. SATTERFIELD:

I would dismiss the complaints against the respondent for the following reasons:

1. The lay-off of the aggrieved Mrs. Morley, and others on April 27, 1976 was caused by a shortage of materials for the bag machines and the most junior employees by length of service were laid off. The lay-off was for suitable business reasons, was carried out in a manner consistent with recent practices of the employer and not in a manner contrary to the meaning of sections 56, 58(a) and 58(c) of the Act. The evidence of Mrs. Morley's supervisor, Mr. R. Waelde supports the position that past lay-offs had occurred from similar causes; affected day and night shifts both; and were carried out on a basis of length of service. Furthermore, Mrs. Morley agreed in cross-examination that she had not been dealt with unfairly.

2. There was no alteration of a condition of employment contrary to the meaning of section 70(2)(a) of the Act. In return from lay-off on April 29, 1976, Mrs. Morley worked at operating a bag machine at her regular rate of pay the same as she had been required to do from time to time in the past. Her own evidence in chief and under cross-examination was that she did not object to so doing. The proposed change from being a quality control employee to being a trainer and the requirement to alternate between day and night shift work was made for good and sufficient business reasons. When Mrs. Morley was re-employed in September 1975 by Mr. Waelde, it was for the purpose of using her and another employee, Clementine Holzapfel, to re-establish a quality control job which had been tried and discarded by the employer prior to Mr. Waelde being hired as supervisor of the bag department. Mr. Waelde's evidence in chief was that he had been given approval to try it and see if it would work this time. He reiterated this fact in cross-examination. He also told Mrs. Morley around April 23, 1976, that the function was going to be discontinued in a couple of weeks time and that she would be working on day shift for two weeks before having to start nights. The evidence is that on April 30, 1976 Mrs. Morley together with Clementine Holzapfel attended a meeting with Messrs. Seniuk and Waelde, and were told the quality control function was not producing satisfactory results in reducing customer complaints. Therefore beginning May 10, 1976 the two employees would become trainers helping to train employees on both shifts. They would rotate between the two shifts, but Mrs. Morley, who was the more junior of the two, would start on night shift. It was established in evidence that junior employees were assigned to the night shift.
3. The respondent on or about May 7, 1976 did not refuse to continue to employ the aggrieved Mrs. Morley contrary to the provisions of sections 58(a) and 58(c) of the Act. All evidence is that she resigned during the morning of May 7, 1976 over the pending requirement to work night shift. She did so without having made any attempt, since first being advised by Mr. Waelde on April 23rd or being formally notified by Messrs. Seniuk and Waelde on April 30th, to see if any accommodation to the change could be worked out. She spoke only to Mr. Wilson, who was not her supervisor and had no authority in the matter, immediately before quitting. Mr. Waelde clearly expected to hear back from Mrs. Morley after the April 30th meeting about her concern of working night shift. His evidence in cross-examination was that, if Mrs. Morley was unable to work nights, the company "would be doing what we are doing now, I would be going in more at nights to check the work".

I find that the respondent has discharged the onus of proof required of it by section 79(4a) of the Act to show that it has not discriminated against Mrs. Morley contrary to the provisions of the Act as claimed by the claimant.

0241-76-R Labourers International Union of North America, Local Union #493, (Applicant), v. **Winson Construction Limited**, (Respondent), v. Group of Employees, (Objectors).

Certification Pre-Hearing Vote – S7a – Whether holding a pre-hearing vote precludes certification pursuant to S7a – Whether participating in pre-hearing vote estoppes applicant from applying under S7a.

BEFORE: R. A. Furness, Vice-Chairman, and Board Members J. D. Bell and E. Boyer.

APPEARANCES: *T. Kuttner appearing for the applicant; D. H. Jack appearing for the respondent; no one appearing for the objectors.*

DECISION OF THE BOARD: July 23, 1976

1. This application for certification was filed on May 4, 1976. The terminal date which was initially fixed for this application was May 13, 1976. At the hearing in this matter on May 24, 1976, the respondent informed the Board that it had not posted the Form 52, Notice to Employees of Application for Certification, Construction Industry, so as to bring this application to the attention of all the employees who are affected by it. In addition, the respondent requested permission to amend the list of employees which it had filed in this matter. The applicant challenged the proposed list of employees.
2. After entertaining the representations of the parties, the Board directed the Registrar to extend the terminal date. The Registrar fixed June 3, 1976 as the new terminal date for this application. In a decision dated June 4, 1976, the Board appointed a Labour Relations Officer to inquire into and report to the Board on the list and composition of the bargaining unit.
3. At the hearing on May 24, 1976, the Board received and entertained the submissions of the parties with respect only to the question of the terminal date and the list of employees which had been filed by the respondent. At the hearing, the Board did not entertain any representations from the parties with respect to the applicant's allegations of improper or irregular conduct against the respondent or the application of section 7a of The Labour Relations Act to this application.
4. At the meeting convened by the Labour Relations Officer, the parties agreed to the list of employees and made arrangements for a representation vote. In a decision dated June 16, 1976, the Board directed the taking of a representation vote. The Board also directed that the ballot box be sealed upon the conclusion of the representation vote.
5. The respondent argues that the applicant, by its conduct is estopped from adducing evidence of improper or irregular conduct against the respondent and raising the application of section 7a to this application. The applicant takes the position that it raised its allegations of improper or irregular conduct and the issue regarding section 7a prior to the initial hearing in this matter and that there is nothing in its conduct which precludes it from adducing evidence with respect to its allegations of improper or irregular conduct.

6. The Board has considered the representations of the parties and finds that the applicant is not estopped from adducing evidence in connection with its allegations of improper or irregular conduct against the respondent and the question of section 7a. The Board was not in a position to consider such allegations and the application of section 7a until after the new terminal date, June 3, 1976. The fact that arrangements for a representation vote were made with a Labour Relations Officer does not, in our view, preclude the hearing of evidence with respect to such allegations and section 7a.

7. In our experience, the number of employees employed by an employer in a construction industry usually varies and on occasions such employer may no longer have employees in the proposed bargaining unit. The Board thus directed a representation vote while there were still employees of the respondent who could participate in such a representation vote. The sealing of the ballot box upon the conclusion of the representation vote enabled the Board to have regard to the representation vote, if necessary, after hearing the evidence and representations with respect to the improper or irregular conduct which were filed by the applicant. Section 7a does not preclude the holding of a representation vote pending the outcome of a decision with respect to whether the true wishes of the employees are not likely to be ascertained because of a contravention of the Labour Relations Act.

8. The Board therefore directs that the parties may adduce evidence and make representations with respect to the allegations of improper or irregular conduct and the application of section 7a. After the Board issues its decision with respect to such allegations and section 7a, it would then be possible to determine whether the ballots cast in the representation vote ought to be counted.

7552-74-R Chatham Construction Workers Association, Local No. 53, affiliated with the Christian Labour Association of Canada, (Applicant), v. **Delcon Electric Limited**, (Respondent).

Parties – Whether trade union signing members after certification of another bargaining agent a proper party in original certification proceedings.

BEFORE: R. A. Furness, Vice-Chairman, and Board Members J. D. Bell and E. Boyer.

APPEARANCES: *William Herridge, Q.C., C. John Vanderlaan and Ed Vanderkloet for the applicant; William A. Willson, Q.C. and Donald R. Waffle for the respondent; and Raymond Koskie and N. McLean appearing for the International Brotherhood of Electrical Workers, Local 773.*

DECISION OF THE BOARD: July 22, 1976.

1. On March 24, 1975, the applicant applied for certification with respect to certain employees of the respondent. The terminal date of this application was April 7, 1975. In a decision dated April 8, 1975, the Board issued a certificate to the applicant with respect to a bargaining unit of "all electricians and electricians' apprentices in the employ of the respon-

dent in the Counties of Essex and Kent, save and except non-working foremen and persons above the rank of non-working foreman.”

2. In a letter dated November 10, 1975, the International Brotherhood of Electrical Workers, Local 773 (“Local 773”) requested the Board to revoke the certificate dated April 8, 1975, which was issued in this matter. Local 773 alleged that the respondent had contributed financial or other support to the applicant contrary to section 12 of The Labour Relations Act and further alleged that at all material times it was the bargaining agent for the employees who were affected by the application for certification and did not receive notice of this application and was therefore unable to participate and intervene in this application. Local 773 claimed that it and the respondent were bound by a collective agreement between the Windsor Electrical Contractors’ Association and Local 773 by reason of the fact that the respondent and Waffle’s Electric Limited (“Waffle’s”) constituted one employer in accordance with section 1(4) of The Labour Relations Act or alternatively the respondent is the successor to Waffle’s in accordance with section 55 of The Labour Relations Act. Local 773 stated that, accordingly, by virtue of section 5 of The Labour Relations Act the Board was without jurisdiction to certify the applicant.
3. Local 773 further or alternatively requested the Board to declare that the applicant no longer represents the employees in the bargaining unit and that any collective agreement entered into between the applicant and the respondent is void since the applicant had obtained its certificate by fraud. In addition, Local 773 requested the Board to set aside and declare inoperative any collective agreement entered into between the applicant and the respondent in view of certain conduct in accordance with the provisions of section 40(a) of The Labour Relations Act.
4. The Board listed this matter for hearing and stated in Form 7, Notice of Hearing that the purpose of the hearing was “To hear the evidence and representations of the parties for the purpose of permitting Local Union 773 of the International Brotherhood of Electrical Workers to show cause (a) whether it has the status to request the Board to inquire into the matters which it has raised in its letter dated November 10, 1975, and (b) if it has such status, whether the Board ought to inquire into such matters.”
5. At the hearing Local 773 filed evidence of membership in Local 773 with respect to the two persons who were employed by the respondent as electricians on March 24, 1975. The evidence of membership with respect to these two persons is dated September 29 and October 16, 1975.
6. The Board initially directed its attention towards the question of status. The two persons for whom Local 773 filed evidence of membership became members of Local 773 after the issuance of the certificate to the applicant. In our view, Local 773 has failed to establish that it has status in this proceeding to request the Board to inquire into the matters which it has raised in its letter dated November 10, 1975. In this case, Local 773 sought to establish an interest in a proceeding which had been completed some five months before it succeeded in obtaining evidence of membership with respect to one of the persons who was employed by the respondent in the bargaining unit on the date of the making of this application for certification. As the Board held in the *Formrite Forming Ltd.* case, [1971] OLRB Rep. Feb. 49, where as in the instant proceeding, a trade union is a stranger to an application for certification which was completed on April 8, 1975, it does not establish an interest

in such a proceeding by filing evidence of membership some ten months after the completion of the certification proceeding so as to enable it to request leave from the Board to adduce evidence in support of the matters raised in its letter dated November 10, 1975.

7. Local 773 relied on an alternative ground as establishing its status in this proceeding and argued that since in its view it has bargaining rights with respect to certain employees of Waffle's that if the facts are such that the respondent and Waffle's could be found to be one employer pursuant to section 1(4) of The Labour Relations Act then Local 773 would be entitled to notice of an application for certification which affects the respondent and accordingly has status in this proceeding.

8. This alternative ground adds another party, Waffle's in order for Local 773 to attempt to establish its status. However, Waffle's is neither a party to this proceeding nor has Local 773 requested that Waffle's be made a party to this proceeding. In the absence of Waffle's to this proceeding the Board is not prepared to embark upon an inquiry into the alleged bargaining rights of Local 773 with respect to Waffle's.

9. While the Board finds that Local 773 does not have the status to raise the matters referred to in its letter dated November 10, 1975, in this proceeding, Local 773 may well be able to establish its status to raise the relevant matters referred to in its letter dated November 10, 1975, in proceedings which may be initiated with respect to sections 1(4) and 55 of The Labour Relations Act. In these circumstances all interested parties will have an opportunity to appear before the Board. In view of this decision by the Board, it becomes unnecessary for the Board to consider part (b) of the purpose of hearing.

0181-76-U Canadian Union of Operating Engineers, (Complainant), v. The Wellesley Hospital, (Respondent).

Change in Working Conditions – S70 – Whether change in long term overtime policy prohibited where prior collective agreement silent – Whether anti-union animus required for a violation – Whether government restraint policy a reason for Board not ordering full compensation.

BEFORE: George S.P. Ferguson, Vice-Chairman, and Board Members H.J.F. Ade and E. Boyer.

APPEARANCES: *K. Gilbert for the applicant; J.W. Sargeant and P.V. Singer for the respondent.*

DECISION OF THE BOARD: July 15, 1976.

1. This is a complaint filed under section 79 of The Labour Relations Act where the complainant alleges violation by the respondent of subsection 1 of section 70 of the Act. The circumstances giving rise to the complaint are not in dispute.

2. The Canadian Union of Operating Engineers replaced the International Union of Operating Engineers as the bargaining agent for the employees of Wellesley Hospital in a unit consisting of stationary engineers and maintenance men and through a certificate issued on February 28, 1976. The old collective agreement between the hospital and the International expired on December 31, 1975. The new bargaining agent gave notice to bargain under section 13 of the Act but no settlement has yet been reached.

3. For the last twenty years or so, the hospital has scheduled the working hours in such a way as to provide two hours of overtime work per week to all employees in the bargaining unit. On April 6 and while bargaining was taking place, the hospital altered its work schedule by eliminating the overtime hours with the result that the employees now earn approximately 7.5% less than previously. This action on the part of the hospital was apparently taken in order to comply with a government policy of restraint. The expired collective agreement has the usual clauses with respect to the scheduling of hours of work and there appears to be nothing in the agreement which affects management's power to alter the hours of work.

4. In light of the above situation the union argued that there was a clear violation of subsection 1 of section 70 of the Act. It suggested that the existence of the overtime work was a condition of employment or privilege and that by altering the hours of work the hospital failed to comply with the complete prohibition provided for in subsection 1. The union requests that the Board direct the employer to make full compensation for the earnings lost since April 6.

5. In response to the union position the hospital contends that it has the exclusive right on the basis of the expired collective agreement to schedule the hours of work including the right to eliminate overtime. As well, the respondent emphasizes that the alteration in this instance was not initiated as a result of any anti-union animus but rather was in response to a government policy of restraint in hospital spending. The hospital contends, therefore, that it was justified in making the alteration in the work schedule in this instance.

Section 70 of The Labour Relations Act reads as follows:

"70. — (1) Where notice has been given under section 13 or section 45 and no collective agreement is in operation, no employer shall, except with the consent of the trade union, alter the rates of wages or any other term or condition of employment or any right, privilege or duty, of the employer, the trade union or the employees, and no trade union shall, except with the consent of the employer, alter any term or condition of employment or any right, privilege or duty of the employer, the trade union or the employees,

- (a) until the Minister has appointed a conciliation officer or a mediator under this Act and,
 - (i) seven days have elapsed after the Minister has released to the parties the report of a conciliation board or mediator, or
 - (ii) fourteen days have elapsed after the Minister has released to the parties a notice that he does not consider it advisable to appoint a conciliation board,

as the case may be; or

- (b) until the right of the trade union to represent the employees has been terminated,

whichever occurs first. R.S.O. 1970c c. 232, s. 70(1).

(2) Where a trade union has applied for certification and notice thereof from the Board has been received by the employer, the employer shall not, except with the consent of the trade union, alter the rates of wages or any other term or condition of employment or any right, privilege or duty, of the employer of the employees until.

- (a) the trade union has given notice under section 13, in which case subsection 1 applies, or
- (b) the application for certification by the trade union is dismissed or terminated by the Board, or withdrawn by the trade union. 1975, c. 76, s. 18.

- (3) Where notice has been given under section 45 and no collective agreement is in operation, any difference between the parties as to whether or not subsection 1 of this section was complied with may be referred to arbitration by either of the parties as if the collective agreement was still in operation and section 37 applies *mutatis mutandis* thereto. R.S.O. 1970, c. 232, s. 70(3)."

6. The effect of subsection 1 is to place "a freeze" on working conditions from both the employers' and employees' perspective from the time notice under section 13 is given until the circumstances in (a) or (b) arise. The purposes of the "freeze" in this context is to provide a period of time during which the parties are to bargain in good faith. Implicit in subsection 1 is the notion that the trade union is now the exclusive bargaining agent of the employees and any alteration in the terms and conditions of employment cannot be made without the consent of the union. It is in the light of this purpose that the circumstances in this case must be analyzed.

7. The first matter we must deal with is the question of whether the hospital has altered "the rates of wages or any other term or condition of employment or any right, privilege or duty". In determining what are the terms of employment of these employees one can look to the expired collective agreement. But there can be terms of employment which exist independently of the collective agreement. Subsection 1 prohibits the alteration of rights or duties and it is the collective agreement which sets out the rights and duties of the parties. It would be redundant to interpret "terms of employment" in subsection 1 as referring merely to the terms of the expired collective agreement. We find then that the practice of scheduling overtime work in these circumstances constitutes a term of employment or privilege enjoyed by employees in the bargaining unit. It should be noted as well that the performance of overtime work by the employees constitutes a privilege of the employer. The employees would be in violation of subsection 1 if they refused to work overtime without the consent of the hospital.

8. In the normal course of events management appears to have the residual authority to alter the hours of work. This residual authority is clearly subject to subsection 1 of section 70. It is not permissible for the hospital in these circumstances to rely on a residual management power to alter the hours of work in the face of section 70.

9. The second matter we must deal with is the question of whether the employer's action must be tainted with an anti-union animus before this Board can find that the employer has not complied with subsection 1 of section 70. In this case we find as a fact the employer's action was not motivated by any anti-union sentiment but rather was motivated by a desire to comply with a government policy of restraint. But this does not prevent this Board from finding that the hospital has not complied with subsection 1. The language in subsection 1 is mandatory in nature and very clear. Its effect is to completely prohibit alterations in working conditions without any reference to the motivation of the parties. (See *The Beaver Electronics Limited Case* [1974] O.L.R.B. Rep. 120).

10. The Board finds that the respondent has violated subsection 1 of section 70 of The Labour Relations Act in that it failed to obtain the consent of the complainant trade union prior to implementing the April 6th alteration in a term of employment or privilege.

11. The final matter of concern here is the question of compensation to the employees affected. Subsection 4 of section 79 provides the Board with a very broad discretionary power. In utilizing this discretionary power here we have considered all of the circumstances in this case. One factor we have examined carefully is the motivation of the hospital management in altering the work schedule. Faced with a government policy of restraint the hospital must exercise discretion with respect to what spending areas will be altered. However, in exercising this discretion the hospital must take section 70 of the Act into account. We are led to the conclusion, therefore, that there are no circumstances in this case which would lead us to do anything but direct the employer to fully compensate the employees concerned.

12. Accordingly, the Board directs the respondent to compensate the employees affected by the rescheduling of work hours for loss of wages after April 6, 1976. Failing agreement of the parties as to the amount of compensation, the Board shall remain seized of the matter.

0092-76-R Labourers' International Union of North America, Local 183, (Applicant), v. **Mount Citadel Limited**, (Respondent).

Certification – Whether receiver-manager or company the employer where company placed in receivership – Effect of union naming company as employer.

BEFORE: George S.P. Ferguson, Q.C., Vice-Chairman and Board Members H.J.F. Ade and P.J. O'Keeffe.

APPEARANCES: *George Allen for the applicant; Thomas G. Heintzman for the respondent.*

DECISION OF THE BOARD: July 12, 1976

2. The applicant applies for certification as bargaining agent for certain employees of Mount Citadel Limited who are engaged in cleaning and maintenance at an apartment building known as Mount Citadel on Don Mills Road in Metropolitan Toronto.

3. While the parties have agreed on the composition of the appropriate bargaining unit, counsel for the respondent has submitted that the application is untimely. It would appear that on the day of the application there were two persons who could be included in the appropriate bargaining unit. However, it is the position of the respondent that in as much as Mount Citadel Limited is presently under the receivership and management of the Metropolitan Trust Company pursuant to a Court Order by the Hon. Mr. Justice Parker dated February 26, 1975, the current application is untimely.

4. Whenever a Receiver-Manager has been appointed by Court Order the question arises as to who is the employer of the employees affected by the application for certification. It must be determined whether the Receiver-Manager appointed by the Court merely represents an alteration in the management of the company with the result that the company continues to be the employer or in the alternative, whether the Receiver-Manager becomes the employer. Having determined who the employer is the Board would then be in a position to properly name the respondent for the purpose of dealing with the application for certification.

5. At common law the appointment of a Receiver-Manager does not result in the dissolution of the company (*Davey v. Gibson*, 64 O.L.R. 627). The company continues to exist but its ability to conduct its business has been considerably curtailed. The mere existence of the company does not however lead one to conclude that it continues to be the employer.

6. On the appointment of a Receiver-Manager the employment contracts of the employees are put to an end. (*Reid v. Explosives Company Ltd*, [1887] 19 Q.B.D. 264). This result is arrived at from the notion that the contracts of service are contracts where the relationship between the parties is of a personal nature. Where the relationship which formed the basis of the service contracts no longer exists, these contracts are prima facie determinable. This result plus the fact that the Receiver-Manager is not an agent of the company but acts as a principal leads one to conclude that the Receiver-Manager becomes the employer once a Receiving Order is made. (See Keer on Receivers, 14th edition Chapter 6 page 122). The former employees who continue working and any new employees are the employees of the Receiver-Manager and they are not employed by the company.

7. In dealing with the Board's jurisprudence one finds that in one case the Receiver was named as the respondent. (*Building Service Employees National Union, Local 204 and Guaranteed Trust Company of Canada*, 47 C.L.L.C. 16,500). In another case the company was named as the respondent. (*North Bay General Workers Union, Local 1603, Canadian Labour Congress v. Gravell Brick Company Ltd.* O.L.R.B. Rep. April [1965] 50). In the latter case the Receiving Order was made one day before the hearing of the application and the Board dealt with the case on the basis of the situation which prevailed on the date of the application. In the Guaranteed Trust case where the Receiver was named as the Respondent, the Board stated the following in confirming its view that the Receiver was the employer:

"The Board is of the opinion that the status of the respondent is no different ... than that of any other employer of labour. At the hearing, evidence was given that the employees affected are employed and discharged and their wages determined by the respondent without reference to the Court. Beyond question there is here in actual fact, an employer-employee relationship."

8. It should be noted that the Order of the Court appointing the Metropolitan Trust Company does not constitute a bar to the application for certification and so long as the Board finds that there is an appropriate bargaining unit having two employees, the Board should proceed with the application once it has satisfied itself with respect to the designation of the appropriate employer.

9. In the case now before the Board where the company and not the Receiver-Manager is named as the respondent there would appear to be two options available to the Board. The first option would be to dismiss the application on the basis that the applicant failed to name the proper employer. The second option would be for the Board to exercise its discretion under section 93 of The Labour Relations Act to add the Receiver-Manager as a party to the proceedings. It would be difficult to conclude that under the circumstances found in this case any mistake which had been made by the applicant in naming the respondent company was anything other than a bona fide mistake. In these circumstances the Board adds the Receiver-Manager, The Metropolitan Trust Company, as a party to the proceedings.

10. The Registrar is directed to serve notice of the proceedings on The Metropolitan Trust Company and to provide that company with a copy of all documents which are normally provided in this type of application. The Board will receive from the Receiver-Manager any representations which it wishes to make before further proceeding with the application for certification.

1196-75-R Retail, Wholesale and Department Store Union,
AFL:CIO:CLC, (Applicant), v. **G. Tamblin Limited**, (Respondent).

Employee – S1(3)(b) – Whether pharmacy manager excluded.

BEFORE: Kevin M. Burkett, Vice-Chairman, and Board Members J.E.C. Robinson, Q.C. and H. Simon.

DECISION OF KEVIN M. BURKETT AND J.E.C. ROBINSON, Q.C.: July 7, 1976

1. In a decision of the Board dated March 10, 1976 Mr. C.F. Robicheau, Labour Relations Officer was appointed to inquire into the duties and responsibilities of the pharmacy managers and the assistant pharmacy managers and report to the Board. In addition Mr. Robicheau was directed to make inquiries as to the proportion of time that the pharmacists listed in Schedule B assume full responsibility for the pharmacy function, and to report to the Board.

2. The Board has received the report of The Labour Relations Officer dated May 18, 1976 and the representations of the company and the union dated May 31 and June 10 respectively. The Board notes the agreement of the parties that the Labour Relations Officer should not examine the assistant pharmacy managers or inquire as to the proportion of time that the pharmacists listed in Schedule B assume full responsibilities for the pharmacy function and the further agreement that if the Board finds the pharmacy managers to be either included or excluded under section 1(3)(b) of the Act that the assistant pharmacy managers should be included or excluded in a like manner. The Board, therefore, must examine the evidence and determine if the pharmacy managers are employees for purposes of the Act.

3. Before examining the evidence as to the duties and responsibilities of Mr. Corriveau the Board wishes to address itself to the representations of the respondent with respect to the decision of the Board, (Board File No. 0660-75-R), dealing with the status of pharmacy managers employed by the respondent company in Metropolitan Toronto. The Board in that case found the pharmacy managers to exercise managerial functions within the meaning of section 1(3)(b) of the Act but did not give any reasons for its decision and as a result that decision is of no assistance to the Board in this matter. The Board must consider the duties and responsibilities of Mr. Corriveau and make its decision on the basis of the evidence contained in the Examiner's Report and the representations of the parties.

4. Section 1(3)(b) of the Act states:

"1. (3) Subject to section 80, for the purposes of this Act, no person shall be deemed to be an employee,

(b) who, in the opinion of the Board, exercises managerial functions or is employed in a confidential capacity in matters relating to labour relations."

5. The underlying purpose of section 1(3)(b) is to protect the integrity of collective bargaining by excluding those persons who exercise managerial function or who are employed in a confidential capacity in matters relating to labour relations from the operation of the Act. The Board in the exercise of its discretion under this section has excluded not only persons who supervise others and make "effective recommendations" with respect to their terms and conditions of employment but also persons who make decisions with respect to policy and/or the operation of an organizational unit. It can easily be seen that persons who exercise either or both types of function would find themselves in a conflict of interest if included within a bargaining unit of other employees.

6. The Board has examined the evidence as it relates to the responsibilities of Mr. Corriveau with respect to inventory, pricing and profits and has concluded that the independent discretion of Mr. Corriveau in these areas is circumscribed. He does not have latitude for independent decision making in these areas but rather is restricted to following the guidelines and directives laid down by the company head office. With respect to inventory Mr. Corriveau stated:

"We have a set procedure which we are required to follow. Our primary source should be the warehouse and if we are unable to obtain the product there then we are to use local wholesalers which there are two in Ottawa.

Mr. Corriveau stated that he did not have authorization to deal with any independent manufacturers and that it has been suggested that where possible he deal with one of the two listed wholesalers. With respect to inventory control Mr. Corriveau stated:

“... we have a guideline, we are given a figure, a dollar figure which is set which we are suppose to carry X number of dollars in inventory and an inventory is conducted. I think it's every three months and we are told that that amount and we are suppose to abide within the guidelines, ...”

The evidence also establishes that the pharmacy manager has minimal discretion with respect to pricing. Mr. Corriveau stated:

“We are given a schedule of prices which we are suppose to charge the maximum that is use in the schedule here, this is the maximum we can charge. We can't charge over that but if an incident does arise where a competitor is charging a lower price I do have flexibility in that I could competitively price that item.”

The evidence discloses however that the exercise of this last mentioned discretion is minimal. Similarly, the pharmacy manager does not draft a budget but rather is restricted to a budget that is drafted by head office. The Board must conclude that the pharmacy manager does not exercise a degree of independent decision making authority in respect of inventory, pricing, or budget which would require that he be excluded pursuant to section 1(3)(b) of the Act.

7. The pharmacy manager, Mr. Corriveau, has supervisory responsibility for five employees, one relief pharmacist, two technicians, one full-time clerk and one part-time clerk. The Board must now address itself to the relationship of Mr. Corriveau to these employees in order to ascertain if Mr. Corriveau exercises a managerial function with respect to these employees which would require that he be excluded from the operation of the Act pursuant to section 1(3)(b). The evidence establishes that Mr. Corriveau who is responsible for the operation of the dispensary, schedules his employees albeit with a maximum allotted number of man hours, can grant short periods of time off, assigns work to his staff and determines the most efficient manner of operation, maintains the professional standards of the dispensary as required by the Health Disciplines Act and trains interns also pursuant to the Health Disciplines Act. It should be added that the pharmacy manager is expected to assist in the training of interns as part of his overall job responsibilities. In addition to the above functions the pharmacy manager is brought into the decision making process in such matters as leaves of absence, discipline, termination employee evaluation, hiring (although it would appear that the recently appointed area supervisor is assuming this responsibility) and special salary increases. Although the evidence establishes that that pharmacy manager does not have independent latitude in these areas it is equally clear from a reading of the evidence that the pharmacy manager, who is the only person to oversee the work of the dispensary staff on a continuous basis in any particular store location, has a power of “effective recommendation” over certain of the terms and conditions of employment of those who work under him. Indeed in the case of Mrs. Crummery, Mr. Corriveau took it upon himself to warn her of the consequences of her failure to conform and put her on notice notwithstanding the fact that he would subsequently require authorization to terminate.

8. The Board stated in the *McIntyre Porcupine Mines Limited* case [1975] OLRB Rep. April 261 at paragraph 39:

"But the 'effective control' test has not been an easy concept to apply. When can it be said that one person exercises effective control over another? One who can discipline, discharge, transfer, promote, or demote another employee surely has such effective control. And with a similar certainty one who only incidentally supervises, instructs, reports, etc. does not. But between these extremes there is a vast penumbral area. In this shadowland a person may exercise only one or two managerial type functions or make recommendations that other decisionmakers consider. Thus it is in this area that the Board has most often said it will look at the "totality" of the evidence in making its determination. And in this light one "effective" function is unlikely to be sufficient to activate section 1(3)(b) although this, of course, depends on the nature of the function. On the other hand, the totality approach means that the trappings of managerial status, as opposed to actual functions, are relevant. These trappings (offices, salary, etc.) may indicate the perspective or intent of the particular parties before the Board and this intent is of assistance when the other indicia of managerial capacity are in balance."

9. In the instant case Mr. Corriveau does not exercise an independent decision making authority as regards policy or the overall operation of the dispensary. He is however responsible for the day-to-day operation of the dispensary and exercises a supervisory function over the five employees who work in the dispensary and in addition has a power of effective recommendation over certain of their terms and conditions of employment. The evidence also discloses that Mr. Corriveau, the pharmacy manager, participates in a management bonus program which is based on cost control, is in possession of keys to the pharmacy and on occasion closes the store, knows the combination of the store safe and personally delivers pay cheques to the dispensary staff. The Board in viewing the "totality" of the evidence in the context of an individual store setting must find that Mr. Corriveau exercises managerial functions within the meaning of section 1(3)(b) of the Act.

10. The applicant advanced the argument that because the pharmacy manager spends a majority of his time (90%) doing "bargaining unit work" i.e. filling prescriptions, the Board should apply the "prime function" test as outlined in the *Falconbridge Nickel Mines Limited* case [1966] OLRB Rep. Sept. 379 and not exclude the pharmacy managers pursuant to section 1(3)(b). The prime function test is referred to at paragraph 30 of the *Falconbridge* case (supra) wherein the Board stated:

"... while a person may have minor supervisory function or very limited confidential functions in matters relating to labour relations if such functions are merely incidental to their main function and are such a nature *that they cannot be said to materially effect the employment relationship of the respondent's employees* such persons should not be excluded from collective bargaining by reason of section 1(3)(b) of the Act ..."

[emphasis added]

The Board has found that Mr. Corriveau does have the power to materially effect the employment relationship of the dispensary employees and as a result the "prime function" test does not apply.

11. The Board reiterates that Mr. Corriveau, as representative of the pharmacy managers employed by the respondent employer, exercises managerial function within the meaning of section 1(3)(b) of the Act and having regard to the agreements of the parties as set out in paragraph 2 of this decision the Board has no alternative but to dismiss the application.

12. The application is dismissed.

DECISION OF BOARD MEMBER H. SIMON:

I dissent.

0001-76-R Service Employees Union, Local 210, Affiliated with Service Employees International Union, AFL-CIO-CLC, (Applicant), v. **Country Village Inc.**, (Respondent), v. Group of Employees, (Objectors).

Membership Evidence – Form 8 – Effect of person signing form 8 not having a chain of inquiry to all collectors.

BEFORE: Kevin M. Burkett, Vice-Chairman and Board Members H.J.F. Ade and O. Hodges.

APPEARANCES: *Ted Wohl, J. Nicholls and Bruce Janisse for the applicant; B.H. Stewart and Gordon Spear for the respondent.*

DECISION OF THE BOARD: July 8, 1976

1. The Board in a decision dated April 28, 1976 appointed a Labour Relations Officer to meet with the parties and inquire into the duties and responsibilities of the activities director, to draw up accurate employee lists and to investigate an alleged non-pay situation. The Board notes the agreement of the parties to waive a formal examiner's report and to include the activities director in the bargaining unit.

2. A hearing was convened on July 2, 1976 for the purpose of hearing evidence with respect to the alleged non-pay. The evidence reveals that the organizing campaign was conducted on behalf of the union by Mr. J. Nicholls, an organizer in the employ of the applicant union. Mr. Nicholls acted as collector and witnessed six of the membership cards which were submitted in evidence. The remaining 27 cards were witnessed by one of five employees of the respondent company. Mr. Nicholls maintained contact with two of these five employees and it was through these two that the remaining 27 cards were transmitted to him. Mr. Nicholls in turn gave the cards to Mr. B. Janisse, the local union business agent, who filed the application and signed the Form 8.

3. The evidence establishes that Mr. Nicholls called a meeting of the respondent's employees on March 8, 1976 at which he explained to the employees who would be acting as collectors the requirements attendant with the payment of the one dollar. The two employees with whom Mr. Nicholls maintained contact were at the March 8, 1976 meeting and were subsequently asked by Mr. Nicholls when they delivered cards to him, "are these cards in order?" Mr. Nicholls testified that he was given an affirmative reply in all cases and that on this basis he replied in the affirmative to the questions put to him by Mr. Janisse with respect to the requirements of Form 8.

4. The applicant admitted that Mrs. C. Garrant one of the two collectors who maintained contact with Mr. Nicholls, had not made the proper inquiries of Miss S. Buller who had witnessed three membership cards and had given these to Mrs. Gallant. Mr. Nicholls was not able to remember if Mrs. Gallant had brought to him membership cards witnessed by other than herself and Mrs. Buller.

5. The Board is satisfied that neither Mr. Nicholls nor Mr. Janisse have deliberately attempted to mislead the Board and is satisfied with the Form 8 inquiries made by Mr. Janisse of Mr. Nicholls and in turn by Mr. Nicholls of the two employee collectors. It is clear, however, that the Form 8 requirements as attested to by Mr. Janisse are meaningless as they apply to the cards which were witnessed by Mrs. Buller. Mr. Janisse did not make the necessary inquiries of Mrs. Buller or of a person who made the necessary inquiries of her. (See *Stanley Steel* case [1972] OLRB Rep. Feb. 181, *N. & D. Supermarket Limited* case [1976] OLRB Rep. March 112) and as a result the Board is not prepared to accept as evidence of membership the cards which were witnessed by the two other collectors who did not maintain contact with Mr. Nicholls and were not directly questioned by him as to the Form 8 requirements. The Board is satisfied however that the membership cards which were witnessed by Mr. Nicholls, Mrs. Garrant and the other employee who maintained contact with Mr. Nicholls, constitute membership evidence within the meaning of the Act and have been properly attested by Mr. Janisse who signed the Form 8.

6. The Board is satisfied on the basis of all the evidence before it that not less than forty-five per cent of the employees of the respondent in the bargaining unit, at the time the application was made were members of the applicant on April 9, 1976, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining membership under section 7(1) of the said Act.

7. A representation vote will be taken of the employees of the respondent in the bargaining unit, which comprises all employees of the respondent employed at its Nursing Home and Lodge at Woodslee, Ontario, save and except professional medical staff, registered nurses, supervisors, persons above the rank of supervisor, office staff, dieticians, physiotherapists, occupational therapists, students employed during the school vacation period and persons regularly employed for not more than twenty-four hours per week. All employees of the respondent in the bargaining unit on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is taken will be eligible to vote.

8. Voters will be asked to indicate whether or not they wish to be represented by the applicant in their employment relations with the respondent.

9. Having regard to the foregoing it is not necessary for the Board to make a finding with respect to the voluntariness of the statement in opposition to the union which was filed in this matter.

10. The matter is referred to the Registrar.

1889-75-R International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (U.A.W.), (Applicant), v. **Standard Tube Canada Limited**, (Respondent), v. Standard Tube Employees' Trade Union, (Predecessor Trade Union), v. Group of Employees, (Objectors).

Successor Status – Effect of improper notice of meeting at which Affiliation provisions of Predecessor Union's Constitution were amended.

BEFORE: Rory F. Egan, Alternate Chairman, and Board Members O. Hodges and J.E.C. Robinson.

APPEARANCES: *B. Chercover, Carl Anderson and Ken Simpson for the applicant; Walter M. Geddes and J.E. Adamson for the respondent; Roy Geroux for the objectors.*

DECISION OF THE BOARD: June 30, 1976

1. This is an application under section 54 of the *Labour Relations Act* for a declaration that the applicant has acquired all the rights, privileges and duties of Standard Tube Employees' Trade Union (hereinafter called "Standard Union"). The application was opposed by a group of employees.

2. The amalgamation or merger which is in dispute is said by the applicant to have been approved by a vote of the membership of the Standard Union held on March 14, 1976 in which seventy members took part. The vote indicated that forty members were in favour of the merger or amalgamation with the applicant and thirty members were opposed.

3. The effectiveness of that vote to bring about the alleged results was challenged by the group of employees who maintained that a two-thirds majority of the membership was required under the constitution in order to bring about the merger.

4. The applicant took the position that, by virtue of an amendment made to section 26 and 27 of the constitution of Standard Union on December 13, 1975, a simple majority of the membership voting was sufficient to accomplish the purpose.

5. The objectors however challenged the validity of the December 13th proceedings on the grounds that the purported amendment was in itself ineffective because it was not brought about in accordance with Article 6 of the constitution which governs amendments.

6. The question of the purported amendment to the constitution is the crux of the whole matter before the Board. This is so because on the evidence, it is clear that all actions taken by the parties subsequent to the amendment of December 13th were clearly taken in conformity with the constitution as amended.

7. Prior to December 13, 1975 Articles 26 and 27 of the constitution of Standard Union provided:

ARTICLE 26 – AFFILIATIONS

The Union may affiliate with other Canadian Labour Organizations from time to time as the members may approve for the purpose of furthering the objects of the Union.

ARTICLE 27 – DISSOLUTION

This Organization may be dissolved only at a special meeting of its members, convened for such purpose by a two-thirds majority vote of the members attending same. Notice of such meeting shall be given in accordance with the provisions of Article 15 of this Constitution.

8. The purported amendment reads as follows:

Articles 26 & 27, as amended December 13th, 1975

By motion duly moved, seconded and carried by a majority vote of those members of the Association present and voting at a meeting duly called for that purpose, the Association may merge or amalgamate with or transfer its jurisdiction to another union and thereupon dissolve [*sic*] its separate existence.

9. Article 6 of the constitution is in the following terms:

ARTICLE 6 – AMENDMENT OF CONSTITUTION

(a) This Constitution may be amended with the following procedure

- (1) A member desiring an amendment shall present, at a regular meeting of the Association, a NOTICE OF MOTION setting forth the proposed change. The NOTICE OF MOTION shall be given orally to the assembly and in writing to the Chairman and it shall be recorded in the minutes of the meeting.
- (2) The NOTICE OF MOTION shall be included in the official notice of the next regular meeting, as part of its agenda.
- (3) At the regular meeting immediately subsequent to the meeting at which the NOTICE OF MOTION was given, the member who tendered it shall present his motion, orally to the assembly and writing to the Chairman, who shall cause it to be recorded in the minutes of the meet-

ing. The motion may be considered by the assembly only after it has been seconded by two (2) other members, failing which it shall be neither discussed nor voted upon. A motion to amend this Constitution shall not pass unless it receives in its favour a two-thirds majority vote of members in attendance at the meeting.

- (4) An amendment arrived at in the above manner shall take effect immediately, subject to the provisions of Article 18, Paragraphs (a) and (b), attached hereto.

10. Also relevant to the proceedings are the provisions of Article 14 of the constitution set out below:

ARTICLE 14 – MEETINGS

- (a) An annual meeting of the members of the Union shall be held each year and regular meetings of the members of the Union may be held quarterly each year, except as otherwise provided herein, at a date, time and place to be determined by the President and-or Executive Board.
- (b) Four (4) members not including officers present in attendance at a regular or special meeting shall constitute a quorum for the transaction of business thereat.
- (c) At every annual meeting, in addition to any other business that may be transacted, the report of the officers, the financial statements and the report of the auditors shall be presented and the officer elected and auditors appointed for the next ensuring year.
- (d) A special meeting of the membership may be ordered by the President and-or Executive Board to deal with any urgent business. Any five (5) members who desire a special meeting may present to the President their written request for such a meeting and the President shall direct that the meeting be held as promptly as prevailing circumstances allow.
- (e) No business shall be discussed or voted on at any special meeting other than set forth in the official notice of the meeting.
- (f) Every official notice of a meeting to the members of the Union shall be given to each member by mail addressed to the last address shown in the Union records for such member or be delivered by hand to such address. Each such notice shall be printed and shall clearly state the date, time and place of the meeting, and it shall also contain an agenda setting forth the business to be dealt with thereat. In the case of a regular meeting, the notice shall be for a minimum of seven (7) days prior to the scheduled date of the meeting. Notice of a special meeting shall be posted for a minimum of four (4) days prior to the scheduled date of the meeting.

- (g) For the purpose of this Constitution, the term "meeting" in whatever case of form it appears herein, shall, unless otherwise indicated, mean a Constitutional assembly of members of this Organization.
- (h) Every member in good standing of the Union, shall have the right to attend any meeting of the membership and to speak and vote on any question or business before it.

11. It is appropriate to point out that the Board, by virtue of the provisions of section 54(2) of the Act, may require the production of such evidence as it considers appropriate. In this regard one of the fundamental requirements of the Board has always been that in any matters involving the changes contemplated under section 54 adequate notice of any proposed merger, amalgamation or transfer of jurisdiction must be given to the members concerned. Any exception to these requirements would have to be constitutionally sound.

12. In the present case, the Board is obliged, because of the objections raised by members, to look to the proceedings immediately preceding the actual merger vote which was held on March 14, 1976 in order to determine if the constitutional change which the members purported to make on that date had been properly based upon the provisions relating to amendments to the constitution.

13. The evidence is that Article 6, subsection (1) of the constitution has been complied with insofar as the amendment is concerned. The necessary motion was made at a membership meeting on November 29, 1975. Section 6, subsection 2, however, has not been complied with. There was in fact a failure to give proper official notice of the next general meeting following November 29th. There was, therefore, no agenda and no reproduction of the motion. In this regard mention must be made of the provisions of Article 14 governing the conduct of meetings and in particular to paragraph (f) of that article where the requirements for an official notice are set out. The article refers to three kinds of meetings – annual, regular and special. Obviously the annual meeting has nothing to do with the matters under review. The minutes of the meetings held on November 29th and December 13th are designated in the minutes themselves as "general" membership meetings but in any event whether the meetings were deemed to be "general" or "regular" or "special", the respective notices required by the constitution were not given. It might be added at this point that amendments to the constitution are required by Article 6 to be made at a regular meeting.

14. The requirement for compliance with the procedures laid down in a constitution governing its amendments, and in particular those proceedings dealing with dissolution of the organization to which the constitution refers, cannot be treated lightly.

15. The constitution is the expression of the agreement between member and member setting out the terms of their association. Any alteration in the provisions of the constitution must therefore be dealt with only upon the terms agreed upon by the members as set out in the constitution. If it were otherwise, the organization would lack real substance and stability. Amendments, and particularly amendments aiming at the dissolution of the association, are therefore, literally, of vital importance and consequently cannot be ignored as mere technicalities nor altered without due constitutional process.

16. In the circumstances of the present case, the failure to give prior notice to the membership of the December 13th meeting in compliance with the constitution is fatal to this application since the amendment is fundamental to the validity and effectiveness of the vote conducted on March 14, 1976.

17. It was suggested at the hearing that this matter might be resolved by the holding of a representation vote by the Board. The Board, however, does not deem it desirable to direct a vote in the circumstances of this case having regard to the provisions and procedures set out in the constitution.

18. The application is accordingly dismissed.

1808-75-M The Borden Company Limited, Ingersoll, Ontario, (Employer), v. Canadian Union of Operating Engineers, Local 105, (Trade Union).

Abandonment – Effect of employer continuing dues check off and remittance during five year period of no other contact with union – Effect of employee continuing dues check off.

BEFORE: D. H. Kates, Vice-Chairman, and Board Members O. Hodges and J. E. C. Robinson, Q.C.

APPEARANCES: *O. R. Knott and A. D. G. Purdy appearing for the employer; Francie Fleming and Tom Terton appearing for the trade union.*

DECISION OF D. H. KATES, VICE-CHAIRMAN, AND BOARD MEMBER O. HODGES: July 2, 1976

1. This is a reference from the Minister pursuant to section 96 of the Act as to whether a conciliation officer ought to be appointed under section 15 of the Act.

2. The facts precipitating this dispute are relatively straight forward. The parties named herein were privy to a collective agreement dated December 1, 1968 and whose expiry date was November 30, 1970. The agreement pertained to a craft unit of stationary engineers assigned to the power house at the employer's plant in Ingersoll, Ontario. The duration clause of the agreement provides for automatic renewal from year to year in the event of a failure by either party to give notice to amend. Since the expiry date of the agreement until the circumstances giving rise to this reference, notice to amend has not been given by either party.

3. In 1970 technical innovations were introduced to the employer's plant operations causing the reduction of the bargaining unit from a complement of five stationary engineers to one. Mr. Tom Terton was the sole engineer remaining after the redundant employees were separated from the company in accordance with the terms of the collective agreement. At the time of the changes Mr. Terton was demoted from a second class engineer to a third class engineer and his salary was reduced commensurately. At all material times the em-

ployer continued to deduct an amount in the way of dues in accordance with the union security provisions of the collective agreement.

4. During the period between June 1970 and August 1975, no contact with the employer was initiated by the trade union. Notwithstanding repeated efforts during this time span by Mr. Terton to persuade Mr. Charles Scott, the trade union's business agent, to advance his interests with respect to salary increases, Mr. Terton was left to the largesse of the employer with respect to improving his terms and conditions of employment. Indeed, the evidence is uncontested that during the intervening period Mr. Terton was the recipient of wage increases and other benefits negotiated by the bargaining agent representing the plant employees at Ingersoll.

5. At a trade union meeting in August 1975 the treasurer of the trade union detected some shortcoming in the amount of dues dispatched by the employer on Mr. Terton's behalf. Apparently Mr. Terton's membership dues were in arrears in the amount of \$40.00. Mrs. Francis Fleming, the trade union's business agent, was dispatched to the employer's plant to investigate the matter. Upon establishing her credentials with Mr. Knott, the employer's manager of operations, the shortcoming was rectified as evidenced by the explanation accorded the employer in a letter dated September 11, 1975. Mr. Terton was approached by Mr. Knott with respect to his arrears and he authorized that the monies owing be paid. The inescapable conclusion that ought to be derived from this incident was the reawakening of interest by the trade union in asserting its rights on Mr. Terton's behalf. On October 7, 1975 the trade union notified the employer of its desire to enter negotiations with the view to amending the collective agreement referred to in paragraph 2 herein. The employer has since resisted the trade union's overtures thereby precipitating the latter's request of The Minister for the appointment of a conciliation officer.

6. The only issue raised by the parties is whether since June 1970 the trade union retained its bargaining rights notwithstanding its failure to bargain on behalf of the one remaining member of the bargaining unit. In resolving such disputes the Board in the past has framed the issue in the following terms (See: *The Belleville and District Builder's Exchange* case [196] OLRB Rep. May 114 at p 115).

"In situations of this kind the Board has said that as a general rule it will have regard to a second automatic renewal but thereafter the onus is on the union to satisfy the Board that it has not abandoned its bargaining rights. This it may do by showing that it retained an interest through contact with the other party to the agreement. Just what contact is necessary depends on the facts in each particular case."

And an elaboration of the criteria the Board applies in determining whether bargaining rights have been abandoned was set out by the following (See: *The O. & W. Electronics Limited* case [1970] OLRB Rep. January 1213 at 1216):

"If a trade union fails to act as bargaining agent for an extended period of time, it may be said to have abandoned its bargaining rights since it is expected that a trade union will actively promote the bargaining rights which it has received. The question of abandonment is one of fact (or perhaps more correctly, is a mixed question of fact and law)

which must be established from all the evidence. As was stated at the hearing, if all the evidence relating to the intervener's bargaining rights was that a collective agreement was entered into in the latter part of 1962 which, on its face, purported to renew itself from time to time thereafter in perpetuity and there was no other evidence of an active bargaining relationship existing between 1962 and the date of making this application, the Board would not hesitate in making a finding of abandonment on the part of the intervener. (In this regard, see *N. W. Calyton Sheet Metal and Heating Co.* case OLRB M.R. April 1967 69; and *Rainee Manufacturing Products Limited* case OLRB M.R. November 1967 796). Needless to say, however, the fact that the agreement had been entered into in 1962 would not necessarily cause the Board to reach the conclusion of abandonment if there were other extenuating circumstances. If, for example, the intervener had continued to hold meetings with the employees in the bargaining unit, had regularly processed grievances through the extended period involved, had continued to receive union dues and had maintained its membership among employees in the bargaining unit, or had taken similar actions to assert its rights as the bargaining agent for employees, the Board would not make a finding of abandonment because there would not, in fact, be an abandonment in such instance."

7. In the circumstances delineated before this Board the evidence establishes that but for the monthly forwarding of Mr. Terton's dues no contact was maintained between the employer and the trade union for a period of five years. Mrs. Fleming, in all candour, agreed that the trade union had not, to be kind, catered to the collective bargaining concerns of Mr. Terton in the intervening period. It must be made absolutely clear however, that the inadequacy of representation by a trade union with respect to resolving the issue of whether bargaining rights were maintained or abandoned is not necessarily a relevant consideration. Our concern is whether the trade union notwithstanding its apparent failure to forward the interests of Mr. Terton by the assertion of its rights may thereby be deemed to have lost them. In this regard, having regard to our policy, the trade union must satisfy us by a reasonable explanation of some extenuating circumstance. The only evidence indicative of a continuum of bargaining rights was the check-off by the employer of dues in accordance with the collective agreement, which by operation of the duration clause continued from year to year *ad infinitum*. By August, 1975, the evidence establishes with some certainty that the trade union by its own actions failed to advance the interests of Mr. Terton, notwithstanding his numerous requests to bargain on his behalf. The discovery by the applicant's officers of the shortcomings in the dues remitted in accordance with the terms of the agreement appears to have reawakened interest in forwarding its bargaining rights. Nevertheless it can reasonably be concluded that during this period of time Mr. Terton was left to fend for himself with respect to improving his term and conditions of employment. It can also be inferred from the employer's behaviour that it governed itself in accordance with the terms of the agreement (for reasons best known to itself) and took no positive steps to sever its relationship with the trade union (see for example section 51(2) of the Act). Indeed, when the discrepancy in the dues check-off was brought to its attention, the employer co-operated with Mrs. Fleming to the extent of taking the necessary measures to adjust the shortcomings.

8. The Board is of the view that a strong case has been made out by the employer that ought to induce us to declare that the trade union, in these circumstances, has lost its bargaining rights through abandonment. Nevertheless there are two factors adduced herein that causes the Board some concern should we be inclined to deprive Mr. Terton of his representative rights. In the first instance Mr. Terton by authorizing the employer to continue the dues deduction (as well as paying up his arrears) thereby expressed a desire to maintain his representative relationship with the trade union notwithstanding its past shortcomings. The policy of the Legislature under section 3 of the Act requires us to accord some weight in resolving disputes pertaining to collective bargaining matters to the free wishes of employees to participate and be represented by a trade union of his own choice. In this regard Mr. Terton by giving his consent to the continuance of the check-off expressed a desire in August of 1975 well in advance of the trade union's notice to bargain to continue his affiliation with the designated bargaining agent. And ancillary to this course of events the representative of the employer in requesting the opinion of Mr. Terton as to whether dues deduction ought to be continued in accordance with the requirements made of it by the trade union, acknowledged that bargaining rights under the collective agreement were still in effect. It was only when the trade union extended notice to bargain that the employer assumed the position that bargaining rights were abandoned. In other words, the employer by its own admission in complying with the union's request to adjust the check-off of union dues acknowledged the continuation of rights that otherwise may have been deemed abandoned. The Board is of the view in this context the employer cannot be heard to argue the contrary.

9. This Board does not condone the wayward treatment accorded Mr. Terton in the manner his interests were represented during the period under examination. Nevertheless we are constrained from finding an abandonment of bargaining rights where the party asserting this to be the case has been actively responsible for their continued subsistence. We do not hold, however, in different circumstances those rights would not have been declared lost having regard to the policy consideration of the past. But in the particular circumstances of this case, the Minister is advised of her authority to appoint a conciliation officer.

DECISION OF BOARD MEMBER J. E. C. ROBINSON, Q.C.:

I dissent.

In view of the past jurisprudence enunciated by this Board, and as set out in paragraph 6 of the majority decision, I would have found that there had been an abandonment of the trade union's bargaining rights.

I view with a certain alarm the majority decision which seems to indicate that in the Board's opinion it is better for an employee to have a non-functioning union, than no union at all.

Accordingly, I would advise the Minister that she does not have the authority to appoint a conciliation officer.

0491-76-U **The de Havilland Aircraft of Canada Limited**, (Applicant), v. Jerome P. Dias, and Local 112, United Automobile, Aero-Space and Agricultural Implement Workers of America, (Respondents).

Strike – S82 – Threatening Strike – Effect of union leader saying “If I had my way” a work stoppage would occur.

BEFORE: Rory F. Egan, Alternate Chairman.

APPEARANCES: *Michael Gordon and Lockie Reid for the applicant; Lennox A. MacLean, Jerome P. Dias, Frank Fiarchild and Larry Sheffe for the respondents.*

DECISION OF THE BOARD: June 30, 1976

1. This is an application brought under section 82 of the *Labour Relations Act* which provides:

82. Where, on the complaint of a trade union, council of trade unions, employer or employers' organization, the Board is satisfied that a trade union or council of trade unions called or authorized or threatened to call or authorize an unlawful strike or that an officer, official or agent of a trade union or council of trade unions counselled or procured or supported or encouraged an unlawful strike or that employees engaged in or threatened to engage in an unlawful strike, the Board may so declare and, in addition, in its discretion, it may direct what action if any a person, employee, employer, employers' organization, trade union or council of trade unions and their officers, officials or agents shall do or refrain from doing with respect to the unlawful strike or the threat of an unlawful strike.

2. The applicant seeks the following direction:

“That threats alleged to have been made by Jerome P. Dias are unlawful and in contravention of the *Labour Relations Act* and that the local union president and all persons who may reasonably be deemed to have knowledge of this order be directed to refrain from engaging in any unlawful strike.”

3. The alleged threats were said to have been made on Friday, June 11, 1976 by Jerome P. Dias, who is president of Local 112, United Automobile, Aero-Space and Agricultural Implement Workers of America.

4. There is no serious disagreement on the facts. The applicant and the respondent union, at the end of a long strike, reached an agreement upon the terms to be incorporated into a collective agreement. The parties had agreed upon an 18% increase in the first year of the proposed agreement. The Anti-Inflation Board (hereinafter called “the A.I.B.”), however, notified the parties that it could accept a first year increase of 15%. The A.I.B. accordingly requested the parties to modify their agreement to conform to its decision. An abortive attempt was made by the company to negotiate with the union in accordance with the direction of the A.I.B.

5. The company, finding itself caught on the horns of the ruling of the A.I.B. and the insistence by the union on the implementation of the terms agreed upon, took unilateral action in an attempt to meet both requirements. To this end the company made adjustments in the pension plan and the cost-of-living allowance. The proposed collective agreement required the payment of a 7¢ adjustment in the cost-of-living allowance in early June. According to the company, payment of this amount would have meant exceeding the A.I.B. limits for the first year of the agreement by 6¢. The company proposed to pay 1¢ on the agreed upon date and postpone the balance of the 6¢ until the second year of the agreement in the hope of satisfying both the A.I.B. and the union. This proposal meant that the payment of the balance of the cost-of-living allowance increase would be postponed for a matter of three weeks. The union became aware of this decision on Friday, June 11th, as notice was given to the employees by the company.

6. At about 10:00 a.m. on June 11th, Dias and David Spalding, chairman of the plant bargaining committee, came to the office of the manager of industrial relations and stated that they wanted to discuss a plant problem with the bargaining committee off the premises. The problem was, in the main, with regard to the cost-of-living adjustment postponement.

7. Dias stated in evidence that at the time of the meeting he was very upset by the three-week postponement of the adjustment. In addition, he was troubled by the pension matter and by problems with the dental plan.

8. There had been a grievance committee meeting scheduled for the afternoon of June 11th but Dias stated that the meeting would have to be cancelled. He added, "If I had my own way, you won't be building aircraft this afternoon."

9. A meeting was called by the company later on on June 11th. It was attended by Dias, who had been invited by the company, Lockie Reid, manager of industrial relations, and D. Christieson, co-ordinator of labour relations for the company.

10. During the course of the second meeting Reid drew Dias' attention to the provision of section 82 of the Act and advised him that the company was taking a very serious view of his statements. He told Dias that the company was contemplating seeking relief under section 82 and that if a strike occurred disciplinary action would be taken and the company would seek monetary compensation. Dias replied that he was well aware of the provision of the *Labour Relations Act*. He told the Board that he then said, "If I had my way, they would not be building anything there in the afternoon."

11. Dias explained to the Board that he was feeling unhappy and frustrated at the time he made the statements and was blowing off steam. He stated in his evidence that in his opinion it was not a threat of a strike and was only letting off steam on a personal basis. He added that he had made no attempt to implement his personal feelings.

12. The Board has given very careful consideration to the words used by Dias at both of the meetings to which reference is made, together with the evidence relating to the circumstances and the context in which they were made. The statement is plainly qualified by the opening phrase "If I had my way." That phrase reduces what, without the qualification, might very constitute a threat within the meaning of section 82 to an expression of personal desire on Dias' part which the Act, to his knowledge, frustrates.

13. In the circumstances and having regard to all of the evidence the Board finds that the words used by Dias did not constitute a threat within the meaning of the Act and the application is accordingly dismissed.

14. The respondent did not file a reply to the application and it was not until the hearing that it raised the argument that whether or not the words used by Dias constituted a threat, the application ought to be dismissed on other grounds. The argument, put briefly, is that the agreement made between the company and the union does not constitute a valid collective agreement in that it was made subject to A.I.B. approval and that it was, in any event, rendered invalid or unlawful in whole by reason of the A.I.B. decision and therefore could not be said to be a collective agreement. The Board recognizes that the problems raised in the course of the very able argument of the respondent are serious and of widespread importance and may have to be dealt with by the Board in other cases where they are pleaded and the disposition of the case necessitates their resolution. In view of the Board's findings set out above, however, there is no need to deal with the argument in the present case.

0324-76-R Wilson-Munroe Company, Employees, (Division of Fine Paper Ltd.), (Applicant), v. Canadian Paperworkers Union, Local 1291, (Respondent), v. **Wilson-Munroe Company**, (Intervener).

Termination – Petition – Effect of organizer of petition approaching management after filling petition for suggestions as to counsel.

BEFORE: Frank V. Boscariol, Vice-Chairman, and Board Members N. B. Satterfield and H. Simon.

APPEARANCES: *C. J. Abbass for the applicant; H. F. Caley and B. Casson for the respondent; D. I. Wakeley and T. Pitchford for the intervener.*

DECISION OF FRANK V. BOSCARIOL, VICE-CHAIRMAN, AND BOARD MEMBER N. B. SATTERFIELD: June 29, 1976

1. This is an application filed pursuant to the provisions of Section 49 of The Labour Relations Act for a declaration that the respondent no longer represents the employees in the bargaining unit for which it is the bargaining agent.

2. During the course of the initial hearing on June 14, 1976 Messrs. David Watson and Robert Gallant, two employees of the intervener testified with respect to the origination, preparation and circulation of the statement of desire filed with the Board on May 19, 1976, in support of this application.

3. Having now had an opportunity to review their evidence and although we find various discrepancies in the testimony of both Messrs. Watson and Gallant, we are nevertheless satisfied that the said statement of desire does represent a voluntary expression of the signatories thereto.

4. In reaching this conclusion, the Board has taken into consideration the uncontradicted evidence to the effect that the majority of the employees at two previous meetings held in April of 1976, had refused to authorize their representatives at the intervener's warehouse to submit amendments on their behalf to the respondent's officials for purposes of the up-coming negotiations, and that at a subsequent meeting, a vote of the employees was held confirming their wishes that they did not desire the respondent trade union to represent them. We further find that it was with this background that Mr. Watson in May of 1976, played an active role in the origination and preparation of the statement of desire, and which culminated in this application being filed before us on May 19, 1976.

5. Regarding Mr. Gallant's testimony concerning the circulation of the statement of desire, and although he appeared confused concerning the times and places during which he witnessed the signatures on this document, we are nevertheless satisfied that the signatories thereto were sufficiently identified for the purposes of these proceedings.

6. During the course of his cross-examination, Mr. Watson conceded that following the filing of this application he did approach an official of the intervener who suggested to him the name of counsel, and whom the applicant has subsequently retained in these proceedings. In this regard, Mr. Watson had been made aware that the respondent trade union had retained the services of a lawyer and that he presumed that the intervener company would, in such circumstances, be also represented by its own lawyer. Having carefully reviewed all of the evidence as adduced in this regard, we are not satisfied that the situation would be such as to preclude the employees from subsequently freely expressing their views at any representation vote which might be directed by this Board. Further, and as indicated to counsel during the course of these proceedings, no charges were filed by the respondent in this regard, and that it would still remain open for the respondent to subsequently make representations to the Board concerning the conclusions to be drawn from the circumstances surrounding the taking of the vote.

7. Accordingly, having regard to all of the evidence and the representations of the parties thereto the Board is satisfied that not less than forty-five per cent of the employees of Wilson-Munroe Company in the bargaining unit at the time the application was made, had voluntarily signified in writing that they no longer wish to be represented by the respondent union on June 7, 1976, the terminal date fixed for this application and the date which the Board determines, under section 92(2)(j) of The Labour Relations Act, to be the time for the purpose of ascertaining the number of persons who have voluntarily signified in writing that they no longer wish to be represented by the respondent union under section 49(3) of the said Act.

8. The Board directs that a representation vote be held of the employees of Wilson-Munroe Company. Those eligible to vote are all employees of Wilson-Munroe Company at its warehouse, save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation period on the date hereof who do not voluntarily terminate their employment or who are not discharged for cause between the date hereof and the date the vote is taken.

9. Voters will be asked to indicate whether or not they wish to be represented by the respondent in their employment relations with Wilson-Munroe Company.

10. The matter is referred to the Registrar.

DECISION OF BOARD MEMBER H. SIMON:

I would reject the application for decertification of the union for the following reasons:

- (1) The signatures on the petition were obtained on company property and on company time.
- (2) The evidence before the Board casts grave doubts on the credibility of the individuals responsible for the origination and circulation of the petition.
- (3) David Watson testified that he had prepared the petition and gave it to Robert Gallant who was to obtain the signatures. He further testified that he saw the petition the same evening and it only had a few signatures of employees. He left the petition with Gallant and took it from him at noon the next day when he delivered it to the Board. On May 19th, Mr. Gallant testified that he had the petition on May 17th and kept it under the blotter on his desk until May 20th when he returned it to Watson.
- (4) Watson testified that he had not signed the petition because he was still Chairman of the union and he felt that it would be a betrayal of his oath of office if he were to sign a petition against the union. Gallant testified that Watson had signed the petition and he identified his signature to be #4.
- (5) There were no dates to indicate when each individual had signed the petition and Mr. Gallant could not identify the time, date and place when he obtained the signatures.
- (6) Watson testified that he had sought advice from a Mr. Pitchford, company Vice-President, with regard to the engagement of counsel to assist in the decertification proceedings and that Mr. Pitchford directed him to counsel which they had engaged.
- (7) Watson testified that he had consulted the employees on the engaging of Counsel. He said that he held a meeting of employees after work on Friday, June 11th. A. Leblond, union steward, testified that on Friday, June 11th, he went after work with Watson and 3 other employees to the beer parlour where they had a few beers and went home and that no meeting was held and that there was no discussion about hiring of counsel.

In previous cases, the Board has been particularly concerned with discrepancies in evidence by witnesses appearing on behalf of petitioners (U.B.A. Chemical Industries Ltd. and International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America Board File #7334-76-R). In this case, the discrepancies of the evidence of the witnesses is so glaring that their credibility must be cast in doubt and the petition should therefore be dismissed.

0094-76-R Canadian Food and Allied Workers Local Union 725, Chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC, (Applicant), v. **Intercity Food Services Inc.**, (Respondent).

Certification – Part-time unit – Whether Board will entertain request for a part-time unit during the hearing when the list of employees is being resolved after the bargaining unit has been settled.

BEFORE: D. H. Kates, Vice-Chairman, and Board Members D. B. Archer and J. E. C. Robinson, Q.C.

DECISION OF THE BOARD: July 5, 1976

1. The Board in its decision dated May 6, 1976 granted the applicant an interim certificate for a full time, all employee bargaining unit. At that time the employment status of Miss F. Gery was challenged and accordingly a Labour Relations Officer was authorized to inquire into and report back to the Board on her duties and responsibilities. Arising out of that inquiry an agreement was reached that Miss Gery did not exercise managerial functions under section 1(3)(b) of the Act but was regularly employed for not more than twenty-four hours per week. As a result of this information the applicant trade union requests, for the first time, that the Board grant a certificate paralleling the bargaining rights extended the full time employees for a part time unit of employees.

2. The Board's practice in according an applicant trade union a part time bargaining unit where an all employee unit is requested is to accede to any such request upon the employer's request for their exclusion. At the initial hearing in this matter no such request was made by the applicant trade union. Rather the request was made as a result of information derived from the efforts of the Labour Relations Officer to resolve a managerial question for purposes of the appropriate exclusions from the full time bargaining unit. The Board, in a recent decision, indicated its concern in making such requests in like circumstances after the bargaining unit is settled and the membership count is disclosed. (See; *The Corporation of The Township of Kingston* case [1975] OLRB Rep. April 370 at p.371):

"It has been the practice of the Board to not entertain requests for alteration in a bargaining unit after disclosure of the number of persons on the schedules and the membership position of the applicant. In this particular application, the representative of the applicant made no representation for exclusion of part time personnel until after the disclosures referred to above had been made at the hearing. Under these circumstances, the Board was unable to comply with the request of the applicant for exclusion of the part time personnel from the bargaining unit. The procedure adopted by the Board was not at variance with the well established practice of the Board."

3. For like reasons, the Board must deny the applicant's untimely request for a certificate granting bargaining rights for the respondent's part time employees. The appropriate time for making such requests is at the stage of the proceedings when the bargaining unit is being discussed and not thereafter when the lists of employees are in the process of being settled.

4. AS a result thereof, the Board finds pursuant to paragraph 2 of its initial decision the following unit appropriate for collective bargaining:

“All employees of the respondent in Brantford, Ontario save and except manager persons above the rank of manager and persons regularly employed for not more than 24 hours per week.”

5. A permanent certificate shall issue.

1617-75-R Retail Clerks Union, Local 206, (Applicant), v. Leons Furniture Limited, (Respondent).

Bargaining Unit – Part-time – Whether all categories included in full time unit will be included in part-time unit even when there are no part-time employees in some of the categories.

BEFORE: D. H. Kates, Vice-Chairman, and Board Members F. W. Murray and H. Simon.

DECISION OF THE BOARD: July 2, 1976

1. This is an application for reconsideration of the Board's decision dated May 18, 1976 where it is alleged that the Board “was in error” in including “sales employees” in the part time bargaining unit described more particularly in these terms:

“all office, clerical and sales employees of the respondent in Kitchener, inclusive of cleaners, regularly employed for not more than twenty-four hours per week and students employed during the school vacation period save and except office and service managers persons above the rank of office and service manager.”

2. It is alleged that the Board erred because at the material time the application was filed there were no employees who would fall into the classification of “sales employees” who were regularly employed “for not more than twenty-four hours per week.” As a result a non-existent classification of employees was wrongly included in the appropriate bargaining unit. It therefore follows that such classification could not be the object of a Board inquiry in measuring the community of interests of employees for purposes of making a determination of the appropriate bargaining unit. Accordingly, the request is made that the unit described in paragraph 1 be amended by deleting the reference to part time sales employees.

3. The Board in entertaining the submissions of the parties in this matter is quite satisfied it was not in error as alleged and for the following reasons. In the first instance, the Board's policy in excluding part time employees and students employed during the school vacation period from the appropriate full time unit is to determine whether any such employee falls into those categories (or if there is a history thereof) who would otherwise be included in the appropriate unit. In other words, the part time unit in all regard to the criteria applied by the Board in determining the appropriate bargaining unit. Once that unit is de-

terminated and an employee falls within the part time or student category then upon request the appropriate exclusions are made. In that event the other party to the proceeding may request a second unit composed of part time employees. The Board's practice is to accede to that request. In so doing the appropriate part time unit will indeed incorporate the same classifications of employees that encompassed the appropriate full time unit.

4. To do otherwise would impel the Board in determining the appropriate part time unit to survey each classification encompassing the appropriate full time unit in order to determine whether a part time employee occupied that classification as of the date the application was filed. Should we comply with the respondent's request, the collective bargaining unit would be rendered ineffectual. In our view, it would lead to a proliferation of bargaining units in the event at a subsequent time a part time employee should indeed be retained by the employer. And in the second instance, the employer by a simple rescheduling and restructuring of its work force could undermine bargaining rights by depleting the employees occupying the appropriate full time unit. The Board simply will not permit either of those situations to arise by virtue of declaring as appropriate a part time unit that departs from the appropriate full time unit.

5. Finally, the Board is of the view that the respondent's premise for requesting the amendment to the part time unit is in error. That is to say, because there exists no sales employees who fall into the part time category we are precluded from measuring the community of interest of that classification of employees with existing part time classifications. On the contrary, the Board was satisfied that sales employees as a category of employee existed, whether full time or part time, as of the date the application was filed. As a result of the evidence obtained in the Labour Relations Officer's Report and the representations of the parties thereto the Board was in a position of measuring criteria that constituted in the circumstances the appropriate bargaining unit irrespective of the employees' hours of work. In other words, the determination of whether or not an employee is regularly employed for not more than twenty-four hours per week is of no consequence to the determination of whether a number of employees filling several classifications constitute an appropriate bargaining unit. The respondent's request to amend the appropriate part time unit is therefore denied.

6. In connection with the applicant's request to amend the description of the units found appropriate by the Board in its initial decision we are of the view that those submissions ought to have been made at the time of the hearing of this matter. Nevertheless for purposes of clarity the Board wishes it to be noted that the composition of those units found appropriate in paragraphs 16 and 19 of its decision are intended to include all employees engaged in the respondent's retail operations in Kitchener. And with respect to the units found appropriate in paragraphs 22 and 28 the Board's intention is that they include all employees working at or out of the respondent's warehouse premises in Kitchener.

CASE LISTINGS JULY 1976

	Page
1. Applications for Certification	
(a) Bargaining Agents Certified	117
(b) Applications Dismissed	126
(c) Applications Withdrawn	129
2. Applications for Declaration Terminating Bargaining Rights	130
3. Application for Declaration of Successor Status	131
4. Applications for Declaration that Strike Unlawful	131
5. Applications for Declaration that Lock-Out Unlawful	132
6. Applications for Consent to Prosecute	132
7. Complaints under Section 79 (Unfair Labour Practice)	133
8. Applications under Section 39	136
9. Jurisdictional Dispute	136
10. Applications for Determination under Section 95(2)	136
11. References to Board Pursuant to Section 96	136
12. Applications under Section 112a	137
13. Application for Reconsideration of Board's Decision	140

APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING JULY 1976

Applications for Certification

BARGAINING AGENTS CERTIFIED DURING JULY

No vote Conducted

1617-75-R: Retail Clerks Union, Local 206 (Applicant) v. Leons Furniture Limited (Respondent).

Unit #1: "all office, clerical and sales employees of the respondent at Kitchener, inclusive of cleaners save and except office and service managers persons above the rank of office and service manager and persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (6 employees in the unit).

Unit #2: "all office, clerical and sales employees of the respondent at Kitchener, inclusive of cleaners, regularly employed for not more than twenty-four hours per week and students employed during the school vacation period, save and except office and service managers persons above the rank of office and service manager." (4 employees in the unit) Unit #4: "all warehousemen and truck drivers of the respondent at Kitchener regularly employed for not more than twenty-four hours per week and students employed during the school vacation period, save and except warehouse managers persons above the rank of warehouse manager." (4 employees in the unit).

Unit #4: "all warehousemen and truck drivers of the respondent at Kitchener regularly employed for not more than twenty-four hours per week and students employed during the school vacation period, save and except warehouse managers persons above the rank of warehouse manager." (4 employees in the unit).

(Bargaining Unit #3 – See Application Certified Subsequent to Post-Hearing Vote).

0094-76-R: Canadian Food and Allied Workers Local Union 725, Chartered by the Amalgamated Meat Cutters and Butcher Workmen of North America, AFL-CIO-CLC (Applicant) v. Intercity Food Services Inc. (Respondent).

Unit: "all employees of the respondent in Brantford, Ontario save and except manager persons above the rank of manager and persons regularly employed for not more than 24 hours per week." (6 employees in the unit).

0285-76-R: Hotel and Restaurant Employees' and Bartenders' International Union A.F.L. C.I.O., Local 604 (Applicant) v. Red Oak Inn, Peterborough (Respondent).

Unit #1: "all employees of the Red Oak Inn, Peterborough, Ontario, save and except supervisors, persons above the rank of supervisor, security guards, front desk clerks, front desk cashiers, office staff, students employed during the school vacation period and persons regularly employed for not more than 24 hours per week." (58 employees in the unit). *(Having regard to the agreement of the parties).*

(Bargaining Unit #2 – See Application Certified Subsequent to Post-Hearing Vote).

0318-76-R: United Brotherhood of Carpenters and Joiners of America, Local Union No. 38 (Applicant) v. Cattarin Construction Limited (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Regional Municipality of Niagara and the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (12 employees in the unit).

0353-76-R: United Steelworkers of America (Applicant) v. Conveyor Belt Maintenance Service Ltd. (Respondent). v. Group of Employees (Objectors).

Unit: "all employees of the respondent working at or out of its plant at Copper Cliff, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than twenty-four hours per week, and students employed during the school vacation period." (30 employees in the unit). (*Having regard to the agreement of the parties*).

0449-76-R: Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers (Applicant) v. Kitchener Beverages Limited (Respondent).

Unit: "all salespersons and telephone salespersons of the respondent working at or out of its plant or offices in Kitchener, Ontario, save and except foremen and supervisors and persons above the rank of foreman and supervisor, office staff and those persons covered by existing collective agreements." (8 employees in the unit). (*clarity note* – see Report of full decision [1976] OLRB Rep. July).

0455-76-R: Canadian Union of Public Employees (Applicant) v. Rayron Holdings Limited carrying on business as Chatelaine Villa Nursing Home (Respondent).

Unit: "all registered and graduate nurses employed by the respondent in a nursing capacity at Chatelaine Villa Convalescent Home in St. Catharines save and except Nursing Supervisor and persons above the rank of Nursing Supervisor." (7 employees in the unit). (*Having regard to the agreement of the parties*).

0463-76-R: Upholsterers International Union of North America AFL/CIO (Applicant) v. Curvply Wood Products (Respondent).

Unit: "all employees of the respondent at Orono, Ontario save and except foremen and foreladies, persons above the rank of foreman and forelady, office and sales staff." (77 employees in the unit).

0465-76-R: Ontario Nurses' Association (Applicant) v. Red Lake Margaret Cochenour Memorial Hospital (Respondent).

Unit: "all registered and graduate nurses employed in a nursing capacity at Red Lake Margaret Cochenour Memorial Hospital save and except the Director of Nursing and those persons above the rank of Director of Nursing." (21 persons in the unit).

0476-76-R: Service employees Union, Local 204, Affiliated with A.F.L. – C.I.O. – C.L.C. (Applicant) v. Christie Park Nursing Homes Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except professional nursing staff, physiotherapists, occupational therapists, supervisors, foremen, persons above the rank of supervisor or foreman, office staff, persons regularly employed for not more than 24 hours per week and students employed during the school vacation period." (45 employees in the unit). (*Having regard to the agreement of the parties*).

0478-76-R: Teamsters, Chauffeurs, Warehousemen and Helpers, Local 91 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. T.L. Bell Consultants Ltd. carrying on business as Capital Sanitation (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent working at or out of Ottawa, save and except foremen and dispatchers, persons above the rank of foreman and dispatcher, office and sales staff and persons working twenty-four hours per week or less." (20 employees in the unit).

0543-76-R: International Union of Operating Engineers, Local 793 (Applicant) v. J. Logan Kerr Limited (Respondent).

Unit: "all employees of the respondent in the City of Timmins, save and except foremen, persons above the rank of foreman, office and sales staff." (6 employees in the unit).

0547-76-R: Ontario Public Service Employees Union (Applicant) v. Cochrane Temiskaming Resource Centre (Respondent).

Unit: "all employees of the respondent employed at the Cochrane Temiskaming Resource Centre in Timmins, Ontario, save and except the Executive Director, Assistant Executive Director, Director of Programming, Comptroller, Purchasing Agent, Manager Personnel Services, Manager Resident Records, Manager Food Services, Manager Building Services, Secretary to Executive Director (1), Secretary to Assistant Executive Director (1), Secretary to Director of Programming (1), Secretary to Manager Personnel Services (1)." (70 employees in the unit). (*Having regard to the agreement of the parties*).

0549-76-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local 647, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Cameron Dairy A Division of the Becker Milk Company Limited (Respondent).

Unit: "all employees of the respondent working at or out of Cornwall, Ontario, save and except foremen, those above the rank of foreman, office and clerical staff and persons regularly employed for not more than twenty-four hours per week." (27 employees in the unit). (*Having regard to the agreement of the parties*).

0558-76-R: The Canadian Union of Public Employees (Applicant) v. Tricil Limited (Respondent).

Unit: "all employees of the respondent working at or out of the City of Kingston, the City of Belleville, the Township of Storrington and the Township of Kingston, save and except supervisors, persons above the rank of supervisor, office, sales and technical staff and persons who are regularly employed for not more than twenty-four hours per week." (19 employees in the unit). (*clarity note – see Report of full decision [1976] OLRB Rep. July*).

0559-76-R: United Steelworkers of America (Applicant) v. Union Miniere Explorations and Mining Corporation Limited (Respondent).

Unit: "all employees of the respondent in the Township of Ponsford in the District of Kenora (Patricia Portion) save and except; shift bosses and foremen and persons above the rank of shift boss and foreman; office and technical staff; security guards; students employed during the school vacation period." (16 employees in the unit). (*Having regard to the agreement of the parties*). (*clarity note – see Report of full decision [1976] OLRB Rep. July*).

0574-76-R: Labourers' International Union of North America Local 837 (Applicant) v. West York Construction Ltd. (Respondent.)

Unit: "all construction labourers in the employ of the respondent in the Regional Municipality of Niagara and the County of Haldimand, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

0577-76-R: Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers (Applicant) v. Coca-Cola Ltd. (Respondent).

Unit: "all office employees of Coca-Cola Ltd. at Peterborough, Ontario, save and except office manager, persons above the rank of office manager, foremen and sales supervisors." (3 employees in the unit). (*Having regard to the agreement of the parties*).

0579-76-R: Christian Labour Association of Canada (Applicant) v. D. L. Stephens Contracting Niagara Limited (Respondent).

Unit: "all construction labourers, truck drivers and cement finishers in the employ of the respondent in the County of Wentworth including part of Township of North Dumfries annexed from Beverly Township and the Township of Nassagaweya and the Town of Burlington in the County of Halton, save and except non-working foremen and persons above the rank of non-working foreman." (9 employees in the unit).

0580-76-R: Labourers International Union of North America, Local 607 (Applicant) v. Progress Wrecking Corporation (Respondent).

Unit: "all construction labourers in the employ of the respondent in the District of Thunder Bay, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

0598-76-R: Chatham Construction Workers Association, Local No. 53, affiliated with the Christian Labour Association of Canada (Applicant) v. Heinz Neuert Carpentry (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the Counties of Essex and Kent, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit). (*Having regard to the foregoing*).

0599-76-R: Christian Labour Association of Canada (Applicant) v. Springhurst Mechanical and Electrical Company Limited (Respondent).

Unit: "all plumbers and plumbers' apprentices in the employ of the respondent in the Townships of Kirkland Lake and the Geographic Townships (unorganized) immediately adjacent thereto in the District of Timiskaming, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit). (*Having regard to the foregoing*).

0600-76-R: United Brotherhood of Carpenters and Joiners of America, Local 2486 (Applicant) v. George Ryder Construction Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in that portion of the District of Algoma south of the 49th parallel of latitude, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

0608-76-R: Canadian Union of United Brewery, Flour, Cereal, Soft Drink and Distillery Workers (Applicant) v. Charles Wilson Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all office employees of the respondent at Metropolitan Toronto, Ontario, save and except confidential secretary to the general manager, office manager, persons above the rank of office manager, office supervisor, foremen and sales supervisors, employees covered by an existing collective agreement dated July 11, 1975, between the applicant and the respondent, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (20 employees in the unit). (*Having regard to the agreement of the parties*).

0610-76-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Cangian Bros. Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

0611-76-R: Labourers' International Union of North America, Local 183 (Applicant) v. Belmont Property Management (Respondent).

Unit: "all employees of the respondent engaged in cleaning and maintenance at 1200 York Mills, Toronto, including resident superintendent, save and except property managers, persons above the rank of property manager, office and clerical staff." (7 employees in the unit). (*Having regard to the agreement of the parties*).

0622-76-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1669 (Applicant) v. Wm. Clark Interiors Ltd. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the District of Kenora, Including the Patricia Portion, save and except non-working foremen and persons above the rank of non-working foreman." (3 employees in the unit).

0630-76-R: Canadian Chemical Workers Union (Applicant) v. Country Style Donuts (Respondent) v. Group of Employees (Objectors)

Unit: "all employees of the respondent at its store located at 101 Dundas Street East, Mississauga, save and except supervisors, persons above the rank of supervisor and persons regularly employed for not more than twenty-four hours per week." (11 employees in the unit). (*On agreement of the parties*).

0632-76-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1190 (Applicant) v. Thosti Carpentry (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

0633-76-R: United Brotherhood of Carpenters and Joiners of America (Applicant) v. Q. E. I. Electric Q. E. I. Electrical Contracting (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the District of Kenora, including the Patricia Portion, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

0646-76-R: The Hotel and Restaurant Employees Union, Local 743, affiliated with the Hotel and Restaurant Employees & Bartenders International Union, W. & D.L.C. and C.L.C. (Applicant) v. Windsor Raceway Holdings Limited (Respondent).

Unit: "all employees of the Maintenance Department of the Company at Windsor, Ontario, save and except Foremen, persons above the rank of Foreman, Students employed during the school vacation periods and persons regularly employed for not more than twenty-four (24) hours per week." (17 employees in the unit). (*Having regard to the agreement of the parties*).

0649-76-R: Teamsters Union, Local 847, Laundry and Linen Drivers and Industrial Workers, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Oclan Industries Limited (Respondent).

Unit: "all employees of the respondent at and out of Metropolitan Toronto, save and except foremen and persons above the rank of foreman, sales and office staff." (5 employees in the unit). (*Having regard to the agreement of the parties*).

0658-76-R: International Union of Operating Engineers, Local 793 (Applicant) v. Ernie Sand and Gravel Limited (Respondent).

Unit: "all employees of the respondent working in pit operations in Essex County save and except foremen and persons above the rank of foreman, office and sales staff, persons regularly employed for not more than twenty-four (24) hours per week and students employed during the school vacation period." (4 employees in the unit).

0671-76-R: Labourers International Union of North America Local Union 493 (Applicant) v. APV-Crepaco of Canada Limited (Respondent).

Unit: "all construction labourers in the employ of the respondent within a radius of thirty-five miles from the City of Sudbury Federal Building, save and except non-working foremen and persons above the rank of non-working foreman." (2 employees in the unit).

0674-76-R: Teamsters, Chauffeurs, Warehousemen and Helpers Local 880 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Applicant) v. I.T.T. Grinnell Division of I.T.T. Industries of Canada Ltd. (Respondent).

Unit: "all employees of the respondent working at Sarnia, Ontario save and except foremen, persons above the rank of foreman, office and sales staff and students employed during the school vacation period." (8 employees in the unit)

0703-76-R: Lake Ontario District Council, on behalf of Locals 397, 572, 1071, 1450 of The United Brotherhood of Carpenters and Joiners of America (Applicant) v. Harvey Speaker Const. Co. (Respondent).

Unit: "all carpenters and carpenters' apprentices in the employ of the respondent in the County of Ontario (except the Townships of Pickering, Rama, Mara and Thorah) and the County of Durham (except the Township of Hope), save and except non-working foremen and persons above the rank of non-working foremen." (10 employees in the unit).

0711-76-R: United Brotherhood of Carpenters and Joiners of America, Local Union 1190 (Applicant) v. Nebula Carpentry Limited (Respondent).

Unit: “all carpenters and carpenters’ apprentices in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except non-working foremen and persons above the rank of non-working foreman.” (2 employees in the unit).

0721-76-R: Christian Labour Association of Canada (Applicant) v. D.L. Stephens Contracting Niagara Limited (Respondent).

Unit: “all carpenters and carpenters’ apprentices in the employ of the respondent in the County of Wentworth including part of Township of North Dumfries annexed from Beverly Township and the Township of Nassagaweya and the Town of Burlington in the County of Halton, save and except non-working foremen and persons above the rank of non-working foreman.” (2 employees in the unit).

0726-76-R: Labourers’ International Union of North America, Local 183 (Applicant) v. Pinevale Construction Co. Ltd. (Respondent).

Unit: “all construction labourers in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, save and except construction labourers employed on building projects, non-working foremen and persons above the rank of non-working foreman.” (2 employees in the unit).

0734-76-R: Operative plasterers and Cement Masons International Association of the United States and Canada, Local # 124, Ottawa, Hull (Applicant) v. Marcel Chaput Drywall (Respondent).

Unit: “all plasterers and plasterers’ apprentices in the employ of the respondent in the Regional Municipality of Ottawa – Carleton and the United Counties of Prescott and Russell, save and except non-working foremen and persons above the rank of non-working foreman.” (4 employees in the unit). (*clarity note* – see Report of full decision [1976] OLRB Rep. July).

0764-76-R: Christian Labour Association of Canada (Applicant) v. Shar-Dee Contracting Ltd. (Respondent).

Unit: “all carpenters, carpenters’ apprentices, construction labourers and all employees in the employ of the respondent in Metropolitan Toronto, The Regional Municipality of York and the County of Peel, the Township of Esquesing and the Towns of Oakville and Milton in the County of Halton and the Township of Pickering in the County of Ontario, engaged in the operating of cranes, shovels, bulldozers, and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman.” (3 employees in the unit). (*Having regard to the foregoing*).

Applications Certified Subsequent to Pre-Hearing Vote

0273-76-R: International Union of Operating Engineers, Local 793 (Applicant) v. Jan Peters Limited (Respondent).

Unit: "all employees of the respondent working in the Regional Municipality of Waterloo except part of Beverly Township annexed by North Dumfries Township and the County of Wellington, engaged in the operation of cranes shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and those above the rank of non-working foremen." (10 employees in the unit).

Number of names of persons on revised voters' list		12
Number of persons who cast ballots	7	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	6	
Number of ballots marked in favour of Incumbent Trade Union	0	

0338-76-R: Local Union 1687 of the International Brotherhood of Electrical Workers (Applicant) v. Indian Bay Limited (Respondent) v. Christian Labour Association of Canada (Intervener).

Unit: "all electricians and electricians' apprentices in the employ of the respondent in the District of Parry Sound and the District of Nippissing, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit). (*Having regard to the representations of the parties*).

Number of names of persons on list as originally prepared by employer		6
Number of persons who cast ballots	6	
Number of ballots marked in favour of applicant	5	
Number of ballots marked in favour of intervener	1	

0516-76-R: Milk and Bread Drivers, Dairy Employees, Caterers and Allied Employees, Local Union No. 647, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (Applicant) v. The Borden Company Limited (Respondent) v. Office and Professional Employees International Union Local 225, 2841 Riverside Drive, Ottawa, Ontario, K1V 8X7 (Intervener).

Unit: "all employees of the company, save and except supervisors, persons above the rank of supervisor, and the secretary to the General Manager." (14 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on list as originally prepared by employer		14
Number of persons who cast ballots	10	
Number of ballots marked in favour of applicant	10	
Number of ballots marked in favour of intervener	0	

0525-76-R: Teamsters, Chauffeurs, Warehousemen and Helpers, Local 141 affiliated with the International Brotherhood of Teamsters Chauffeurs, Warehousemen & Helpers of America (Applicant) v. Hardee Farms International Ltd. Lambeth Division (Respondent).

Unit: "all employees at the plant of Hardee Farms International Ltd., Lambeth Division save and except Foremen, Foreladies, persons above the rank of Foreman and Forelady, Stationary Engineers, Office, Sales and Technical Staff, Part-Time employees working not more than 24 hours a week, students employed during the school vacation period, seasonal employees employed between June 1 and November 1 and Agricultural Workers." (149 employees in the unit).

Number of names of persons on revised voters' list		63
Number of persons who cast ballots	62	
Ballots segregated and not counted	4	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	30	
Number of ballots marked against applicant	27	

0546-76-R: Upholsterers International Union of North America AFL/CIO (Applicant) v. Craftline Industries Limited (Respondent).

Unit: "all employees of Craftline Industries Limited in Metropolitan Toronto, save and except foremen, persons above the rank of foreman, office and sales staff and students employed for the school vacation period." (139 employees in the unit). (*Having regard to the agreement of the parties*).

Number of names of persons on revised voters' list		130
Number of persons who cast ballots	127	
Number of spoiled ballots	2	
Number of ballots marked in favour of applicant	70	
Number of ballots marked against applicant	55	

Applications Certified Subsequent to Post-Hearing Vote

1617-75-R: Retail Clerks Union, Local 206 (Applicant) v. Leons Furniture Limited (Respondent).

Unit #3: "all warehousemen and truck drivers of the respondent at Kitchener, save and except warehouse managers persons above the rank of warehouse manager and persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (2 employees in the unit). (*clarity note* – see Report of full decision [1976] OLRB Rep. July).

Number of names of persons on list as originally prepared by employer		4
Number of persons who cast ballots	4	
Number of ballots marked in favour of applicant	3	
Number of ballots marked against applicant	1	

(*Bargaining Unit #1, #2 & #4 – See Bargaining Units Certified – No vote Conducted*).

1883-75-R: Labourers International Union of North America, Local 837 (Applicant) v. P. L. S. Construction Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all construction Labourers in the employ of the respondent in the County of Wentworth including part of Township of North Dumfries annexed from Beverly Township and the Township of Nassagaweya and the Town of Burlington in the County of Halton, save and except non-working foreman and persons above the rank of non-working foreman." (6 employees in the unit).

Number of names of persons on revised voters' list		7
Number of persons who cast ballots	5	
Number of ballots marked in favour of applicant	4	
Number of ballots marked against applicant	1	

0285-76-R: Hotel and Restaurant Employees' and Bartenders' International Union A.F.L. C.I.O., Local 604 (Applicant) v. Red Oak Inn, Peterborough (Respondent).

Unit #2: "all employees of the Red Oak Inn, Peterborough, Ontario, regularly employed for not more than 24 hours per week save and except office staff, front desk clerks, front desk cashiers and students employed during the school vacation period." (66 employees in the unit).

Number of names of persons on list as originally prepared by employer		46
Number of persons who cast ballots	9	
Number of ballots marked in favour of applicant	7	
Number of ballots marked against applicant	2	

(Bargaining Unit #1 – See Bargaining Units Certified – No Vote Conducted).

0428-76-R: Upholsterers International Union of North America AFL/CIO (Applicant) v. Better T-Shirt Company, A Division of Environmental Innovations Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in Metropolitan Toronto, save and except foremen persons above the rank of foreman, office and sales staff." (83 employees in the unit).

Number of names of persons on revised voters' list		34
Number of persons who cast ballots	32	
Number of ballots marked in favour of applicant	17	
Number of ballots marked against applicant	15	

0431-76-R: Service Employees International Union, Local 532, A. F. of L., C. I. O., C. L. C. (Applicant) v. Central Park Lodges of Canada – Hamilton (Respondent).

Unit: "all employees of the respondent at Hamilton who are regularly employed for not more than twenty-four hours per week and students employed during the school vacation period, save and except professional nursing staff physiotherapists, occupational therapist, supervisors, foremen and persons above the rank of supervisor or foreman." (15 employees in the unit).

Number of names of persons on list as originally prepared by employer		15
Number of persons who cast ballots	12	
Number of spoiled ballots	0	
Number of ballots marked in favour of applicant	10	
Number of ballots marked against applicant	2	

APPLICATIONS FOR CERTIFICATION DISMISSED

No Vote Conducted

1196-75-R: Retail, Wholesale and Department Store Union, AFL:CIO:CLC (Applicant) v. G. Tamblin Limited (Respondent). (19 employees).

1774-75-R: United Steelworkers of America (Applicant) v. Veres Wire Industry Ltd. (Respondent). (56 employees).

0075-76-R: Labourers' International Union of North America, Local 183 (Applicant) v. Concord Concrete Forming Limited (Respondent). (31 employees).

0143-76-R: United Steelworkers of America (Applicant) v. Titan Wood Products Ltd., and Hida Industries Inc. (Respondent) v. Group of Employees (Objectors). (56 employees).

0394-76-R: United Plant Guard Workers, Local 1962 (Applicant) v. Allied Investigation and Security Limited (Respondent). (115 employees).

0488-76-R: United Brotherhood of Carpenters & Joiners of America Local Union 2737 (Applicant) v. Davis Lumber Company Ltd. (Respondent). (15 employees).

0529-76-R: Service Employees Union, Local 210, affiliated with Service Employees International Union, AFL-CIO-CLC (Applicant) v. LaPointe-Fisher Nursing Home Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Wallaceberg, Ontario, save and except professional medical staff, registered nurses, supervisors, persons above the rank of supervisor, office staff, dietitians, physiotherapists, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (67 employees in the unit).

0618-76-R: Association of Warehousing and Shipping Employees (Applicant) v. Fast Service Shipping Terminals (Respondent). (13 employees).

0625-76-R: Teamsters, Chauffeurs, Warehousemen and Helpers of America Local 141 (Applicant) v. Harry Woods Transport Limited and Apollo Leasing Limited (Respondents). (no employees).

Certification Dismissed Subsequent to Pre-Hearing Vote

1858-75-R: International Woodworkers of America (Applicant) v. Welk-Um Steel Products Ltd. (Respondent).

Voting Constituency: "All employees of Welk-Um Steel Products Ltd. in Eganville, Ontario, save and except foremen, persons above the rank of foreman, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during school vacation period." (10 employees).

Number of names of persons on revised voters' list		10
Number of persons who cast ballots		10
Number of ballots marked in favour of applicant	5	
Number of ballots marked against applicant	5	

0539-76-R: International Brotherhood of Electrical Workers, Local Union 105 (Applicant) v. Hexamer Electric Limited (Respondent) v. Christian Labour Association of Canada (Intervener).

Voting Constituency: "All electricians and electricians' apprentices in the employ of the respondent in the Counties of Brant and Norfolk, save and except non-working foremen and persons above the rank of non-working foreman." (32 employees).

Number of names of persons on list as originally prepared by employer		33
Number of persons who cast ballots		32
Number of ballots excluding segregated ballots cast by persons whose names appear on voters' list	26	

Number of segregated ballots cast by persons whose names appear on voters' list	6
BALLOT BOX SEALED	

Certification Dismissed Subsequent to Post-Hearing Vote

1306-75-R: United Rubber, Cork, Linoleum and Plastic Workers of America, AFL-CIO-CLC (Applicant) v. Revel International Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at Barrie, Ontario save and except foremen, persons above the rank of foreman, office, clerical and technical staff, sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (33 employees in the unit).

Number of names of persons on list as originally prepared by employer		31
Number of persons who cast ballots	29	
Number of spoiled ballots	1	
Number of ballots marked in favour of applicant	6	
Number of ballots marked against applicant	22	

0150-76-R: The Sheet Metal Workers International Association Local Union 562 (Applicant) v. Lin-car Mechanical Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all sheet metal workers and sheet metal apprentices in the employ of the respondent in the Regional Municipality of Waterloo except part of Beverly Township annexed by North Dumfries Township, save and except non-working foremen and persons above the rank of non-working foreman." (4 employees in the unit).

Number of names of persons on revised voters' list		5
Number of persons who cast ballots	5	
Number of ballots marked in favour of applicant	2	
Number of ballots marked against applicant	3	

0175-76-R: Teamsters Local 879 Affiliated with The International Brotherhood of Teamsters; Chauffeurs, Warehousemen and Helpers of America (Applicant) v. St. Catharines Building Supplies Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent at St. Catharines, Ontario, save and except supervisors, those above the rank of supervisor, office and sales staff, persons regularly employed for not more than twenty-four hours per week and students employed during the school vacation period." (10 employees in the unit).

Number of names of persons on list as originally prepared by employer		9
Number of persons who cast ballots	9	
Number of ballots marked in favour of applicant	3	
Number of ballots marked against applicant	6	

0251-76-R: United Electrical, Radio and Machine Workers of America (UE) (Applicant) v. Husky Floor Machines Division of Syd W. Collier Co. Ltd. (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in the Municipality of Metropolitan Toronto and at 2001 Wharton Way South, in the City of Mississauga, save and except foremen, persons above the rank of foreman, and office and sales staff." (29 employees in the unit).

Number of names of persons on list as originally prepared by employer		30
Number of persons who cast ballots	29	
Number of ballots marked in favour of applicant	10	
Number of ballots marked against applicant	19	

0360-76-R: International Union of Operating Engineers, Local 793 (Applicant) v. Murray R. Gray Limited (Respondent) v. Group of Employees (Objectors).

Unit: "all employees of the respondent in the Regional Municipality of Ottawa – Carleton and the United Counties of Prescott and Russell engaged in the operated of cranes, shovels, bulldozers and similar equipment, and those primarily engaged in the repairing and maintaining of same, save and except non-working foremen and persons above the rank of non-working foreman." (9 employees in the unit).

Number of names of persons on revised voters' list		15
Number of persons who cast ballots	15	
Number of ballots marked in favour of applicant	6	
Number of ballots marked against applicant	9	

0515-76-R: The Canadian Brotherhood of Railway, Transport & General Workers (Applicant) v. preston Food and Seed Limited (Respondent).

Unit: "all employees of the respondent working at or out of Cambridge, Ontario save and except foremen and dispatchers persons above the rank of foreman and dispatcher, office and sales staff and students employed during the school vacation period." (24 employees in the unit).

Number of names of persons on list as originally prepared by employer		26
Number of persons who cast ballots	26	
Number of ballots marked in favour of applicant	6	
Number of ballots marked against applicant	20	

APPLICATIONS FOR CERTIFICATION WITHDRAWN

1886-75-R: Labourers' International Union of North America, Local 183 (Applicant) v. Peel-Elder Developments Limited (Respondent). (12 employees).

0280-76-R: Retail Clerks International Association, Local 409 (Applicant) v. Zalgar Investments Incorporated (Respondent). (29 employees).

0352-76-R: Sheet Metal Workers' International Association Local Union #504 (Applicant) v. G. Grossi Plumbing and Heating (Respondent). (2 employees).

0440-76-R: Labourers' International Union of North America, Local 527 (Applicant) v. Dibblee Construction Ltd. (Respondent). (19 employees).

0601-76-R: Labourers International Union of North America Local 491 (Applicant) v. Bigelow Lip-tack (Respondent). (3 employees).

0602-76-R: Hotel & Restaurant Employee's & Bartender's International Union A.F.L. & C.L.C. C.I.O. Local 756 (Applicant) v. The Montebello Inn (Respondent). (32 employees).

0624-76-R: The Carpenters' District Council of Toronto and Vicinity on behalf of Locals 27, 666, 681, 1133, 1963, 3227 and 3233, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Indrescom Scaffold Erectors or Talisman Scaffold (Respondent). (5 employees).

0639-76-R: Canadian Union of Public Employees (Applicant) v. North Bay Civic Hospital Commission (Respondent). (64 employees).

0641-76-R: International Union of Operating Engineers, Local 793 (Applicant) v. Dibblee Construction Company Limited (Respondent). (1 employee).

0661-76-R: Labourers International Union of North America, Local 837 (Applicant) v. Lucato Bros & Co Ltd Masonry Contractors (Respondent). (5 employees).

0727-76-R: Labourers' International Union of North America, Local 183 (Applicant) v. First Federal Construction Limited & First Federal Management (Respondent). (3 employees).

0728-76-R: Labourers' International Union of North America, Local 183 (Applicant) v. Com/Sec Property Management Ltd. (Respondent). (no employees).

0729-76-R: Labourers' International Union of North America, Local 183 (Applicant) v. A. E. Lepage Ltd. (Respondent). (3 employees).

0763-76-R: Labourers' International Union of North America, Local 491 (Applicant) v. Central Terrazzo & Tile of Sudbury Ltd. (Respondent). (4 employees).

0772-76-R: Local Union 221 United Association of Journeymen and Apprentices & Pipefitting Industry of the United States and Canada (Applicant) v. Daniel International (Canada) Ltd. (Respondent). (70 employees).

0775-76-R: Labourers' International Union of North America, Local 183 (Applicant) v. Greenwin Property Management (Respondent). (4 employees).

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

0229-76-R: Mr. Peter White (Applicant) v. Teamsters, Chauffeurs, Warehousemen and Helpers Local Union No. 141 (Respondent) v. Vallance Brown and Co. Limited (Intervener). (*Granted*).

Unit: "all employees of the company employed at London save and except foremen, persons above the rank of foreman, office and sales staff." (1 employee in the unit).

Number of names of persons on list as originally prepared by employer			2
Number of persons who cast ballots		2	
Number of ballots marked in favour of Respondent	0		
Number of ballots marked against Respondent	2		

0236-76-R: Wayne Palmasteer and Andre Monette (Applicant) v. Canadian Union of Public Employees, Local 831 (Respondent) v. The Corporation of the City of Brampton (Intervener). (*Granted*).

Unit: "all employees of the Transit Department save and except dispatchers, persons above the rank of dispatcher, persons regularly employed for not more than 24 hours per week, and students employed during the school vacation period." (61 employees in the unit).

Number of names of persons on revised voters' list			66
Number of persons who cast ballots		51	
Number of spoiled ballots	1		
Number of ballots marked in favour of respondent	9		
Number of ballots marked against respondent	41		

0434-76-R: Mario Bravo (Applicant) v. International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) (Respondent). (31 employees). (*Terminated*).

0664-76-R: Joseph Schmidt Carpentry Limited (Applicant) v. Local Union 1190, United Brotherhood of Carpenters & Joiners of America (Respondent). (3 employees). (*Granted*).

APPLICATION FOR DECLARATION OF SUCCESSOR STATUS

0225-76-R: Canadian Union of Public Employees (Applicant) v. The Mississauga Public Library Board (Respondent) v. The Mississauga Public Library Staff Association (Predecessor Trade Union) v. Employee (Objector). (*Granted*).

APPLICATIONS FOR DECLARATION THAT STRIKE UNLAWFUL

0556-76-U: Labourers' International Union of North America, Local 1081 (Applicant) v. Petros Construction and Development Limited, Kamal Y. Petros, Jessie Green and Issa Nazi (Respondents). (*Withdrawn*).

0629-76-U: Konvey Construction Company Limited (Applicant) v. The United Brotherhood of Carpenters and Joiners of America, Local 1946 (Respondent). (*Direction*).

0653-76-U: Konvey Construction Company Limited (Applicant) v. Labourers' International Union of North America, Local 1059 (Respondent). (*Dismissed*).

0659-76-U: Arthur G. McKee and Company of Canada Limited (Applicant) v. R. Armstrong, J. Bissonnette, J. Connell, J. Craven, J. Croke, B. Docherty, F. LeClaire, J. McFarlane, K. McLatchie, M. Nadeau, G. Paulmert, E. Power, W. Randle, E. Richard, F. Schoenhals, K. Wall, H. White and J. White (Respondents). (*Direction*).

0668-76-U: Foster Wheeler Limited (Applicant) v. T. Armstrong, et al (Respondents). (*Withdrawn*).

APPLICATIONS FOR DECLARATION THAT LOCK-OUT UNLAWFUL

0363-76-U: Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 141 (Applicant) v. Livingston Transportation Limited (Respondent). (*Dismissed*).

0620-76-U: Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 141 (Applicant) v. Harry Woods Transport Limited (Respondent). (*Direction*).

APPLICATIONS FOR CONSENT TO PROSECUTE

1041-75-U: Canadian Union of Public Employees, Local 1106 (Applicant) v. Queensway General Hospital Association (Respondent). (*Withdrawn*).

0036-76-U: Graphic Arts International Union Local 12-L (Applicant) v. Graphic Centre (Ontario) Inc. (Respondent). (*Withdrawn*).

0349-76-U: Arthur G. McKee and Company of Canada Limited (Applicant) v. P. Atkins, et al (Respondents). (*Withdrawn*).

0390-76-U: International Brotherhood of Electrical Workers, Local Union 353 (Applicant) v. Ketter Electric Limited, Sam Herzog and Joe Belavin (Respondents). (*Withdrawn*).

0422-76-U: International Brotherhood of Electrical Workers, Local Union 353 (Applicant) v. Primary Electrical Contractors Limited, Giuseppe Mazzotta and Nick Norsillo (Respondents). (*Terminated*).

0423-76-U: International Brotherhood of Electrical Workers, Local Union 353 (Applicant v. G. A. Electrical Company Ltd., and Livio Milanesio and Angelo Buligan (Respondents). (*Withdrawn*).

0472-76-U: International Beverage Dispensers' and Bartenders' Union, Local 280, of the Hotel and Restaurant Employees' and Bartenders' International Union A.F.L.-C.I.O.-C.L.C. (Applicant) Seaway Hotels (Ontario) Limited known as Beverley Hill Hotel (Respondent). (*Withdrawn*).

0518-76-U: Sheet Metal Workers' International Association Local Union #504 (Applicant) v. G. Grossi Plumbing & Heating, G. Grossi (Respondents). (*Withdrawn*).

0551-76-U: Canadian Union of Public Employees (Applicant) v. Ingersoll Public Utilities Commission (Respondent). (*Withdrawn*).

0583-76-U: Canadian Union of Public Employees and its Local #799 (Outside Employees) (Applicant) v. The Corporation of the Town of Trenton (Respondent). (*Withdrawn*).

0655-76-U: International Brotherhood of Electrical Workers, Local Union 105 (Applicant) v. Hexamer Electric Limited, Peter Hexamer, Gary DeJong and John Castle (Respondent). (*Terminated*).

COMPLAINTS UNDER SECTION 79 (UNFAIR LABOUR PRACTICE)

1040-75-U: Canadian Union of Public Employees, Local 1106 (Complainant) v. Queensway General Hospital Association (Respondent). (*Withdrawn*).

1510-75-U: Albert Leo Kent (Complainant) v. International Harvester Truck Plant (Respondent). (*Withdrawn*).

1573-75-U: John W. Higgins (Complainant) v. Canadian Union of Public Employees Local 94 (Respondent) v. Borough of North York (Intervener). (*Dismissed*).

0035-76-U: Graphic Arts International Union Local 12-L (Complainant) v. Graphic Centre (Ontario) Inc. (Respondent). (*Withdrawn*).

0069-76-U: Roy Fake (Complainant) v. The Ontario Council of the International Brotherhood of Painters and Allied Trades and International Brotherhood of Painters and Allied Trades, Local 1783 (Respondent). (*Dismissed*).

0129-76-U: Toronto Typographical Union No. 91 (Complainant) v. C C H Canadian Limited (Respondent). (*Dismissed*).

0181-76-U: Canadian Union of Operating Engineers (Complainant) v. The Wellesley Hospital (Respondent). (*Granted*).

0230-76-U: Retail Clerks International Association (Complainant) v. McDermott Drug Ltd. (Respondent). (*Withdrawn*).

0309-76-U: Canadian Chemical Workers Union (Complainant) v. Custom Converters Printers Limited (Respondent). (*Granted*).

0342-76-U: London and District Service Workers' Union, Local 220, S.E.I.U., A.F.L., C.I.O., C.L.C. (Complainant) v. The Ontario Cancer Foundation (Thameswood Lodge) (Respondent). (*Withdrawn*).

0355-76-U: Teamsters, Chauffeurs, Warehousemen and Helpers Local 880, Affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Complainant) v. Deneau Steel Ltd. (Respondent). (*Withdrawn*).

0382-76-U: Jay Sussman (Complainant) v. United Steelworkers of America, Local 7135 (Respondent). (*Dismissed*).

0391-76-U: International Brotherhood of Electrical Workers, Local Union 353 (Complainant) v. Ketter Electric Limited, Sam Herzog and Joe Belavin (Respondents). (*Withdrawn*).

0400-76-U: Oil and Gas Technicians, Service, Domestic and General Workers Union Local 1267, L.I.U. of N. A. (Complainant) v. Regal Toy Ltd. (Respondent). (*Withdrawn*).

0421-76-U: International Brotherhood of Electrical Workers, Local Union 353 (Complainant) v. Primary Electrical Contractors Limited, Giuseppe Mazzotta and Nick Morsillo (Respondent). (*Terminated*).

0424-76-U: International Brotherhood of Electrical Workers, Local Union 353 (Complainant) v. G. A. Electric Company Ltd., and Livio Milanesio and Angelo Buligan (Respondents). (*Granted*).

0451-76-U: Ivan Jones (Complainant) v. Teamster's Local Union No. 230 Ready-Mix, Building Supply, Hydro & Construction Drivers (Respondent). (*Dismissed*).

0456-76-U: Ontario Nurses' Association (Complainant) v. Trenton Memorial Hospital (Respondent). (*Withdrawn*).

0462-76-U: Upholsterers International Union of North America AFL/CIO (Complainant) v. Curvply Wood Products (Respondent). (*Withdrawn*).

0473-76-U: International Beverage Dispensers' and Bartenders' Union, Local 280, of the Hotel and Restaurant Employees' and Bartenders' International Union A.F.L.-C.I.O.-C.L.C. (Complainant) v. Seaway Hotels (Ontario) Limited known as Beverley Hill Hotel (Respondent). (*Withdrawn*).

0492-76-U: The Canadian Union of Public Employees and its Local 1559 (Complainant) v. The Corporation of Leeds, Grenville and Lanark District Health Unit (Respondent). (*Withdrawn*).

0501-76-U: Ontario Nurses' Association (Complainant) v. Huron County Health Unit (Respondent). (*Withdrawn*).

0519-76-U: Sheet Metal Workers' International Association Local Union #504 (Complainant) v. G. Grossi plumbing & Heating G. Grossi (Respondents). (*Withdrawn*).

0522-76-U: Canadian Union of Public Employees (Complainant) v. Chatelaine Villa Convalescent Home (Respondent). (*withdrawn*).

0527-76-U: Manuel Correia (Complainant) v. Canadian Food and Allied Workers (Respondent). (*Withdrawn*).

0540-76-U: The Canadian Brotherhood of Railway, Transport & General Workers (Complainant) v. Preston Feed and Seed Limited (Respondent). (*Withdrawn*).

0541-76-U: The Canadian Brotherhood of Railway, Transport & General Workers (Complainant) v. Preston Feed & Seed Limited (Respondent). (*Withdrawn*).

0554-76-U: Labourers' International Union of North America, Local 1081 (Complainant) v. Petros Construction and Development Limited, Kamal Y. Petros, Jessie Green and Issa Nazi (Respondents). (*Withdrawn*).

- 0555-76-U:** Labourers' International Union of North America, Local 1081 (Complainant) v. Petros Construction and Development Limited, Kamal Y. Petros, Jessie Green and Issa Nazi (Respondents). (*Withdrawn*).
- 0561-76-U:** International Molder & Allied Workers Union (Complainant) v. Union Electric Supply Co. Limited (Respondent). (*Withdrawn*).
- 0588-76-U:** Ontario Nurses' Association (Complainant) v. Halton Regional Health Unit (Respondent). (*Withdrawn*).
- 0589-76-U:** Ontario Nurses' Association (Complainant) v. Hamilton-Wentworth Regional Health Unit (Respondent). (*Withdrawn*).
- 0591-76-U:** Ontario Nurses' Association (Complainant) v. Niagara Regional Health Unit (Respondent). (*Withdrawn*).
- 0595-76-U:** Ontario Nurses' Association (Complainant) v. Peel Regional Health Unit (Respondent). (*Withdrawn*).
- 0596-76-U:** Ontario Nurses' Association (Complainant) v. Peel Regional Health Unit (Respondent). (*Withdrawn*).
- 0606-76-U:** Alfredo Cerqueira (Complainant) v. Union Local 597 Oshawa (Respondent). (*Withdrawn*).
- 0607-76-U:** Richard Gondos (Complainant) v. United Cement, Lime & Gypsum Workers International Union AFL CIO CLC (Respondent). (*Withdrawn*).
- 0612-76-U:** Ontario Nurses' Association (Complainant) v. Kingston, Frontenac and Lennox and Addington Health Unit (Respondent). (*Withdrawn*).
- 0613-76-U:** Ontario Nurses' Association (Complainant) v. Halton Regional Health Unit (Respondent). (*Withdrawn*).
- 0614-76-U:** Ontario Nurses' Association (Complainant) v. Niagara Regional Health Unit (Respondent). (*Withdrawn*).
- 0619-76-U:** Ron Furman (Complainant) v. Borden Ltd., Office and Professional Employees International Union – Local 131 (Respondent). (*Withdrawn*).
- 0652-76-U:** The Ottawa Board of Education Employees' Association (Complainant) v. The Ottawa Board of Education (Respondent). (*Withdrawn*).
- 0656-76-U:** International Brotherhood of Electrical Workers, Local Union 105 (Complainant) v. Hexamer Electric Limited, Peter Hexamer, Gary DeJong and John Castle (Respondents). (*Terminated*).

0666-76-U: Canadian Union of Public Employees (Complainant) v. Corporation of the Town of Fort Erie (Respondent). (*Withdrawn*).

0722-76-U: Teamsters Union Local 141, affiliated with the International Brotherhood of Teamsters Chauffeurs, Warehousemen & Helpers of America (Complainant) v. Hardee Farms International Ltd. (County of Middlesex) (Respondent). (*Withdrawn*).

0745-76-U: Leo Kent (Complainant) v. Local Union 127 of International Harvester Works Dept. Chatham (Respondent). (*Withdrawn*).

APPLICATIONS UNDER SECTION 39

0526-76-M: Michael J. Bain (Applicant) v. The United Electrical, Radio and Machine Workers of America, Local 525 (Respondent Trade Union) v. Ferranti-Packard Limited (Respondent Employer). (*Withdrawn*).

0582-76-M: Ray Kenneth Dagg (Applicant) v. United Steelworkers of America (Respondent Trade Union) v. The Steel Company of Canada, Limited, Hilton Works (Respondent Employer). (*Terminated*).

JURISDICTIONAL DISPUTE

0299-76-JD: International Brotherhood of Electrical Workers Local Union 353 (Complainant) v. Day Signs Limited and International Brotherhood of Painters and Allied Trades, Local 1630 (Respondent). (*Dismissed*).

APPLICATIONS FOR DETERMINATION UNDER SECTION 95(2)

1877-75-M: London and District Service Workers Union, Local 220 (Trade Union) v. The St. Thomas-Elgin General Hospital (Employer). (*Granted*).

0008-76-M: The Canadian Union of Public Employees and its Local 1115 (Applicant) v. The Corporation of the City of Welland (Respondent). (*Withdrawn*).

0542-76-M: Federation of Community Agency Staffs (Applicant) v. Childrens Aid Society of the County of Bruce (Respondent). (*Withdrawn*).

REFERENCES TO BOARD PURSUANT TO SECTION 96

1808-75-M: The Borden Company Limited, Ingersoll, Ontario (Employer) v. Canadian Union of Operating Engineers, Local 105 (Trade Union). (*Granted*).

0503-76-M: Fabricated Metals & Stampings Limited (Employer) v. International Union, United Automobile, Aerospace & Agricultural Implement Workers of America Local 222 (Trade Union). (*Affirmative*).

0504-76-M: Patterson Industries (Canada) Limited (Employer) v. United Steelworkers of America Local 5482 (Trade Union). (*Affirmative*).

APPLICATIONS UNDER SECTION 112a

1590-75-M: United Brotherhood of Carpenters and Joiners of America, Local Union 446 (Applicant) v. Cavalier Const. Inc. and George Ryder Constrauction Limited (Respondents). (*Withdrawn*).

0315-76-M: Sheet Metal Workers' International Association Local Union #285 (Applicant) v. Lion Sheet Metal Ltd. Residential Sheet Metal Contractors Organization (Respondents). (*Withdrawn*).

0417-76-M: United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada, Local Union 663 (Applicant) v. The Mechanical Contractors Association Sarnia and S N C Services Ltd. and Spiers Brothers Limited, Operating as S N C / Spiers (Respondents). (*Withdrawn*).

0581-76-M: International Association of Bridge, Structural and Ornamental Iron Workers Local Union 721 (Applicant) v. The Ontario Erectors Association Alumex Co. (Respondent). (*Withdrawn*).

0605-76-M: International Union of Bricklayers and Allied Craftsmen Local No. 12 Kitchener Ontario (Applicant) v. D. J. Masonry Ltd. (Respondent). (*Withdrawn*).

0615-76-M: International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local 230 (Applicant) v. Petrisan Construction Ltd. (Respondent). (*Withdrawn*).

0616-76-M: Labourers' International Union of North America, Local 183 (Applicant) v. E & N Forming Ltd. (Respondent). (*Withdrawn*).

0643-76-M: Labourers' International Union of North America, Local 527 (Applicant) v. Structural Formwork Limited Ottawa Construction Assocaition (Respondents). (*Withdrawn*).

0673-76-M: International Union of Operating Engineers, Local 793 for Earl Keller (Applicant) v. Tower Crane Rental (York) Ltd. (Respondent). (*Withdrawn*).

0676-76-M: The Wood, Wire and Metal Lathers' International Union, Local 562 (Applicant) v. The Interior Systems Contractors Association and A.L.C. Interior Systems Incorporated (Respondents). (*Withdrawn*).

0677-76-M: The Wood, Wire and Metal Lathers' International Union, Local 562 (Applicant) v. The Interior Systems Contractors Association and Cleveland Drywall Ltd. (Respondents) (*Withdrawn*).

0678-76-M: The Wood, Wire and Metal Lathers' International Union, Local 562 (Applicant) v. The Interior Systems Contractors Association and Cesaroni Brothers Ltd. (Respondents). (*Withdrawn*).

0679-76-M: The Wood, Wire and Metal Lathers' International Union, Local 562 (Applicant) v. The Interior Systems Contractors Association and D.M.D. Triangle Lathing & Acoustics Co. Ltd. (Respondents). (*Withdrawn*).

0680-76-M: The Wood, Wire and Metal Lathers' International Union, Local 562 (Applicant) v. The Interior Systems Contractors Association and Decor Drywall of Ontario Ltd. (Respondents). (*Withdrawn*).

0681-76-M: The Wood, Wire and Metal Lathers' International Union, Local 562 (Applicant) v. The Interior Systems Contractors Association and Lyn-Tone Drywall Co. Ltd. (Respondents). (*Withdrawn*).

0682-76-M: The Wood, Wire and Metal Lathers' International Union, Local 562 (Applicant) v. The Interior Systems Contractors Association and Donaldson & Barron Ltd. (Respondents). (*Withdrawn*).

0683-76-M: The Wood, Wire and Metal Lathers' International Union, Local 562 (Applicant) v. The Interior Systems Contractors Association and Downsview Lathing & Drywall Co. Ltd. (Respondents). (*Withdrawn*).

0684-76-M: The Wood, Wire and Metal Lathers' International Union, Local 562, (Applicant) v. The Interior Systems Contractors Association and Durable Drywall Ltd. (Respondents). (*Withdrawn*).

0685-76-M: The Wood, Wire and Metal Lathers International Union, Local 562 (Applicant) v. The Interior Systems Contractors Association and C. Romanelli Drywall Ltd. (Respondents). (*Withdrawn*).

0686-76-M: The Wood, Wire and Metal Lathers' International Union, Local 562 (Applicant) v. The Interior Systems Contractors Association and Empire Lathing, Drywall & Acoustics Co. Ltd. (Respondents). (*Withdrawn*).

0687-76-M: The Wood, Wire and Metal Lathers' International Union, Local 562 (Applicant) v. The Interior Systems Contractors Association and E. & M. Lathing Co. (Respondents). (*Withdrawn*).

0688-76-M: The Wood, Wire and Metal Lathers' International Union, Local 562 (Applicant) v. The Interior Systems Contractors Association and Agincourt Drywall & Acoustics Ceiling Co. Ltd. (Respondents). (*Withdrawn*).

0689-76-M: The Wood, Wire and Metal Lathers' International Union, Local 562 (Applicant) v. The Interior Systems Contractors Association and Fanelli Lathing Co. Ltd. (Respondents). (*Withdrawn*).

0690-76-M: The Wood, Wire and Metal Lathers' International Union, Local 562 (Applicant) v. The Interior Systems Contractors Association and Royal Lathing & Drywall Ltd. (Respondents). (*Withdrawn*).

- 0691-76-M:** The Wood, Wire and Metal Lathers' International Union, Local 562 (Applicant) v. The Interior Systems Contractors Association and Halton Drywall Ltd. (Respondents). (*Withdrawn*).
- 0692-76-M:** The Wood, Wire and Metal Lathers' International Union, Local 562 (Applicant) v. The Interior Systems Contractors Association and Macon Drywall Systems Ltd. (Respondents). (*Withdrawn*).
- 0693-76-M:** The Wood, Wire and Metal Lathers' International Union, Local 562 (Applicant) v. The Interior Systems Contractors Association and Marel Contractors Ltd. (Respondents) (*Withdrawn*).
- 0694-76-M:** The Wood, Wire and Metal Lathers' International Union; Local 562 (Applicant) v. The Interior Systems Contractors Association and Northdown Drywall & Construction Ltd. (Respondents). (*Withdrawn*).
- 0695-76-M:** The Wood, Wire and Metal Lathers' International Union, Local 562 (Applicant) v. The Interior Systems Contractors Association and Speed Drywall Ltd. (Respondents). (*Withdrawn*).
- 0696-76-M:** The Wood, Wire and Metal Lathers International Union, Local 562 (Applicant) v. The Interior Systems Contractors Association and Suburban Lathing & Acoustics Ltd. (Respondents). (*Withdrawn*).
- 0697-76-M:** The Wood, Wire and Metal Lathers' International Union, Local 562 (Applicant) v. The Interior Systems Contractors Association and Suburban Drywall Ltd. (Respondents). (*Withdrawn*).
- 0698-76-M:** The Wood, Wire and Metal Lathers' International Union, Local 562 (Applicant) v. The Interior Systems Contractors Association and Urban Acoustics & Drywall Systems (Respondents). (*Withdrawn*).
- 0699-76-M:** The Wood, Wire and Metal Lathers' International Union, Local 562 (Applicant) v. The Interior Systems Contractors Association and Upton Lathing Co. Ltd. (Respondents). (*Withdrawn*).
- 0700-76-M:** The Wood, Wire and Metal Lathers' International Union, Local 562 (Applicant) v. The Interior Systems Contractors Association and York Lathing & Drywall Ltd. (Respondents). (*Withdrawn*).
- 0701-76-M:** The Wood, Wire and Metal Lathers' International Union, Local 562 (Applicant) v. The Interior Systems Contractors Association and Yorkland Drywall & Acoustics (Respondents). (*Withdrawn*).
- 0702-76-M:** The Wood, Wire and Metal Lathers' International Union, Local 562 (Applicant) v. The Interior Systems Contractors Association and Gemini Lathing Contractorss Ltd. (Respondents). (*Withdrawn*).
- 0707-76-M:** Lake Ontario District Council, on behalf of Locals 397, 572, 1071, 1450 of the United Brotherhood of Carpenters and Joiners of America (Applicant) v. Oshawa Forming Ltd. (Respondent). (*Withdrawn*).

0712-76-M: International Union of Operating Engineers, Local 793 (Applicant) v. Adbo Contracting Co. Ltd. (Respondent). (*Withdrawn*).

APPLICATION FOR RECONSIDERATION OF BOARD'S DECISION

1617-75-R: Retail Clerks Union, Local 206 (Applicant) v. Leons Furniture Limited (Respondent). (*Request Denied*).

STATISTICAL TABLES FOR FIRST QUARTER OF FISCAL YEAR 1976-7

TABLE I

APPLICATIONS AND COMPLAINTS FILED WITH THE ONTARIO LABOUR RELATIONS BOARD

	Number Filed	1st Quarter	
		April to June (incl.)	
		1976-77	1975-76
I. Certification		290	327
II. Declaration Terminating Bargaining Rights		21	15
III. Declaration of Successor Status		8	9
IV. Declaration that Strike Unlawful		45	43
V. Declaration that Lock-Out Unlawful		1	—
VI. Consent to Prosecute		42	42
VII. Complaint of Unfair Practice in Employment (Section 79)		147	67
VIII. Miscellaneous		94	36
	TOTAL	648	539

TABLE II

HEARINGS OF THE ONTARIO LABOUR RELATIONS BOARD

	Number Filed	
	1st Quarter	
	April to June (incl.) 1976-77	1975-76
Hearings and Continuation of Hearings by the Board	372	355

TABLE III

APPLICATIONS AND COMPLAINTS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD BY MAJOR TYPES

	Number Disposed of	
	1st Quarter	
	April to June (incl.) 1976-77	1975-76
I. Certification	279	336
II. Declaration Terminating Bargaining Rights	16	17
III. Declaration of Successor Status	3	12
IV. Declaration that Strike Unlawful	21	25
V. Declaration that Lock-Out Unlawful	1	—
VI. Consent to Prosecute	17	22
VII. Complaint of Unfair Practice in Employment (Section 79)	92	76
VIII. Miscellaneous	68	33
	<hr/>	<hr/>
TOTAL	497	521
	<hr/>	<hr/>

TABLE IV

**APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPE AND DISPOSITION**

		Number of Applications		Number of Employees*	
		1st Quarter		1st Quarter	
		April to June (incl.)		April to June (incl.)	
		1976-77	1975-76	1976-77	1975-76
I. Certification					
Granted		206	227	6841	11501
Dismissed		43	66	1432	3648
Withdrawn		30	43	473	489
	TOTAL	279	336	8746	15638
II. Termination of Bargaining Rights					
Granted		5	12	77	179
Dismissed		8	5	67	58
Withdrawn		3	—	36	—
	TOTAL	16	17	180	237

*These figures refer to the number of employees directly affected and are based on the number of employees in the bargaining units at the time the applications for certification were filed with the Board. Totals for applications dismissed and withdrawn are approximate.

TABLE IV

**APPLICATIONS DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD
BY TYPE AND DISPOSITION (CONTINUED)**

		Number of Applications	
		1st Quarter	
		April to June (incl.)	
		1976-77	1975-76
III.	Declaration that Strike Unlawful		
	Granted	7	12
	Dismissed	3	3
	Withdrawn	11	10
	TOTAL	<u>21</u>	<u>25</u>
IV.	Declaration that Lock-Out Unlawful		
	Granted	1	—
	Dismissed	—	—
	Withdrawn	—	—
	TOTAL	<u>1</u>	<u>—</u>
V.	Consent to Prosecute		
	Granted	1	2
	Dismissed	4	2
	Withdrawn	12	18
	TOTAL	<u>17</u>	<u>22</u>
VI.	Complaint of Unfair Practice in Employment (Section 79)		
	Granted	11	4
	Dismissed	19	22
	Withdrawn	62	50
	TOTAL	<u>92</u>	<u>76</u>

TABLE V

**REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS
DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD**

	Number of Votes	
	1st Quarter	
	April to June (incl.) 1976-77	1975-76
Certification after Vote*		
Pre-hearing Vote	15	18
Post-hearing Vote	7	25
Ballots not Counted	—	—
Dismissed after Vote		
Pre-hearing Vote	8	7
Post-hearing Vote	7	15
Ballots not Counted	1	—
TOTAL	38	65

*Includes applicant-intervener applications in which both applicant and intervener apply for a new unit and either applicant or intervener is certified.

TABLE VI

**REPRESENTATION VOTES IN CERTIFICATION APPLICATIONS
DISPOSED OF
BY THE ONTARIO LABOUR RELATIONS BOARD**

	Number of Votes	
	1st Quarter	
	April to June (incl.) 1976-77	1975-76
*Respondent Union Successful	—	2
Respondent Union Unsuccessful	4	9
TOTAL	4	11

*In Termination Proceedings where a vote is taken the applicant is a group of employees or the employer; the incumbent union is thus the respondent.

Government
Publications

BINDING SECT. OCT 14 1980

Government
Publications



3 1761 1146518 4